

WASHINGTON, February 20, 1830.

DEAR SIR : I have been instructed by the Board of Directors of the Chesapeake and Ohio Canal Company, to engage you to draw out, for publication, the Argument which you delivered, as our counsel, before Chancellor Bland, at Annapolis, during the last Autumn, on the motion made, at the instance of the Chesapeake and Ohio Canal Company, to dissolve the injunction which had been obtained at the suit of the Baltimore and Ohio Rail-road Company, and by which the progress of the Chesapeake and Ohio Canal was arrested at "The Point of Rocks," in Maryland.

The report which has gone abroad, and is now diligently circulated, to the prejudice of this company, that the survey about to be made, in compliance with the views of the Chancellor of Maryland, was sought by the President and Directors of this company, gives an additional importance to the request which I had the honor verbally to communicate to you sometime ago, and which it is now made my duty to repeat in a more formal manner.

With great respect, I am, dear sir, yours truly,

C. F. MERCER,

President of the Chesapeake and Ohio Canal Company.

WILLIAM WIRT, Esq.

WASHINGTON, March 10, 1830.

DEAR SIR : The request which you made of me, last month, on behalf of the Chesapeake and Ohio Canal Company, to draw out my Argument before the Chancellor of Maryland, last Summer, on the motion to dissolve the injunction obtained against them by the Baltimore and Ohio Rail-road Company, found me so closely and constantly engaged with my duties in the Supreme Court, as to render it impossible for me to do more than to make a *rough sketch* from my notes of the *propositions* which I endeavored to maintain in that argument. I have had no time to make a full developement of my views, much less to attend to style. In truth, what I now hand you is very little more than a *rough copy* of my *original notes*. It may still, however, answer the purpose which you have in view, of shewing the grounds on which we sought and expected a dissolution of the injunction, as well as those on which we rest the *prior* right of your company to the *choice of route* along the left bank of the Potomac, and of shewing, also, that the dilatory measures which keep the decision in suspense, were so far from having been sought by us, which I understand to be the representation, that we deprecated and resisted those measures with all the earnestness, and by every argument and consideration which we could suggest.

Yours, most respectfully,

WILLIAM WIRT.

CHARLES F. MERCER, Esq.

President Chesapeake and Ohio Canal Company.

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IN THE HIGH COURT OF CHANCERY OF THE STATE
OF MARYLAND.

THE BALTIMORE AND OHIO RAIL ROAD COMPANY

vs.

THE CHESAPEAKE AND OHIO CANAL COMPANY.

The charter of the Defendants, the Chesapeake and Ohio Canal Company, was granted by the State of Virginia, on the 27th January, 1824.—(See Appendix A.)

This grant was made to depend on the condition of its receiving the assent of the State of Maryland, and of the Congress of the United States. It received the assent of the State of Maryland in December, 1824; and of Congress, on the third March, 1825. So far, therefore, as the Canal was proposed to be conducted through the territory within the jurisdiction of either of these sovereigns, the compact became complete at the latter date.—(See Appendix A.)

The object of the incorporation is announced in the preamble of the charter: it was to construct “a navigable canal from the tide water of the river Potomac, in the District of Columbia, to the mouth of Savage Creek, on the north branch of said river, and extending, thence, across the Alleghany Mountain, to some convenient point of the navigable waters of the river Ohio, or some of its tributary streams, to be fed, through its course, on the east side of the Mountain, by the river Potomac, and the streams which empty therein, and on the western side,” &c.

To enable the Company thus incorporated, to accomplish this object, the 4th section of the act gives to “the President and Directors, and their successors, full power and authority to appoint, and, at their pleasure, to dismiss, such engineer or engineers, and agent or agents, as they may deem expedient, and to fix their compensation; and to agree with any person or persons, on behalf of the said Company, to cut canals, erect dams, open feeders, construct locks, and perform such other works as they shall judge necessary or expedient, for completing the canal hereinbefore mentioned and described.”

The 15th section, after reciting, that, “whereas it is necessary for the making of the said canal, locks, dams, ponds, feeders, and other works, that a provision should be made for condemning a quantity of land for the purpose,” proceeds to authorize the Company “to agree

with the owners of any land, through which the said canal is intended to pass, for the purchase, or use and occupation thereof; and, in case of disagreement, or in case the owner thereof shall be a feme covert," &c. it authorizes a jury to be summoned, to estimate the damages, and, on payment thereof, it vests the Company with an estate in perpetuity, in the land so condemned.

Various reports and surveys had been made and published under the authority of Congress, and of the States of Virginia and Maryland, to demonstrate the practicability of such a canal as this charter described; and their reports and surveys, with their explanatory plats, invariably indicated the left bank of the Potomac as presenting the preferable route for the canal. (B.)

The Baltimore and Ohio Rail Road Company was called into existence by an act of the Legislature of Maryland, *alone*; which act was passed at the December session of 1828.

The Defendants having discovered that the Baltimore and Ohio Rail Road Company, leaving the route which was understood to have been originally contemplated by them, had determined to come down to the valley of the Potomac, and to take the left bank of that river, and that, with this view, they were endeavoring to pre-occupy that bank by purchasing up the land at all the narrow and difficult passes, and condemning it, by juries, where they could not acquire it by purchase; and the Defendants being further advised, that this was an unlawful invasion of the *prior right* secured to them, not only by their direct charter, but by the early charter of the Potomac Company, to all whose rights they had succeeded, by assignment, applied to the Honorable John Buchanan, the presiding Judge of the Court of Appeals of Maryland, and one of the Judges of the circuit in which these operations were going on, to arrest them by injunction; and an injunction, for the purpose, was accordingly awarded by him, in Washington county, in the State of Maryland. The bill there filed by these Defendants, contains an exposition of the grounds on which they assert this prior right, and they had hoped that the Rail Road Company would have answered that bill, and brought this decisive question to a speedy issue. Instead of answering this bill, however, the Rail Road Company have applied to the Chancellor of Maryland for a similar injunction against these Defendants, asserting their own prior right to the choice of route, and praying for an injunction, *until* this question of priority of right can be heard and determined. This injunction has been awarded, and its effect is to block up the whole of the left bank of the Potomac against these Defendants, from the Point of Rocks to Cumberland, and to render it impossible for them to proceed in execution of their works, above the "Point of Rocks." Their charter being limited, in point of time, it is important for them to have the whole course open to their operations; which, according to the advanced state of the science of canalling, can be carried forward at different and distant points of their line, at one and the same time.

These defendants having answered the bill on which the injunction is founded, now move that the injunction shall be dissolved.

We insist that it ought to be dissolved, because the answer denies the fundamental allegation of the bill, on which, its equity rests. The injunction prohibits the defendants from acquiring, by purchase or condemnation, certain lands along the margin of the Potomac, for the passage of the canal. The bill alleges that the defendants claim the right to acquire these lands for the passage of the canal, by an asserted right of election, prior to that of the complainants; and the bill denies that any such prior right exists, in behalf of the defendants. The defendants, in their answer, meeting this allegation of the bill, insist that this prior right does exist in their behalf, and they place their authority to make these acquisitions by purchase and condemnation, on the precise basis of such, their prior right. The bill and answer, therefore, are at issue on this precise question: and a moment's consideration will make it manifest, that the fate of the injunction must depend on the decision of this question: for, if the Chesapeake and Ohio Canal Company have, *by law*, the *prior choice* of their own route, along the shores of the Potomac, it must be manifest that no injunction, whose object it is to drive them from that choice, in favor of any other corporation or individual, can correctly stand. The existence of a prior and paramount choice of route, in favor of the Chesapeake and Ohio Canal Company, from its very nature, puts down all competition: for, to permit a competition to arise, and to turn them aside from that choice, by an injunction, is to deny the existence of a prior and paramount choice in their favor. The injunction which has been granted, on the allegation of the Bill, that the defendants had no such prior right of election of their route, was rightly granted, upon the assumption that they had no such prior right: for, on this head, we admit, that, if the rights of these corporations be equal in point of time; if the sovereigns who created them both, intended to start them, like race horses, on the same field, so that whichever first reached the goal should win the prize; or rather, intended to pit them, like gladiators, on the same arena, to cut each others' throats, and to contend for victory and life in every blow—there is no controversy in the case. The race and the battle must both be to the swiftest. But if, according to the answer, the charter which called the Chesapeake and Ohio Canal Company into existence, gave them the prior right to the choice of route for their canal, along the shores of the Potomac, it must be conceded, and I do not understand it to be denied, that an injunction restraining them in the exercise of that choice, cannot be permitted to stand: for, if the sovereigns who created this corporation have authorized the Company to choose their route, by prior right, it cannot be competent to any court, acting under the authority of these sovereigns, or either of them, to say that they shall not choose it. For this would be the exercise of legislative, not of judicial power. It would be a repeal, by judicial authority, of that prior right, which the charter, emanating from legislative power, had conferred. Hence, I conceive it to be manifest, that the whole controversy turns on the existence or non-existence of this prior right of choice, denied to the

Chesapeake and Ohio Canal Company by the Bill, but asserted by the answer.

There is not another question in the cause, which, in comparison with the above, does not either become insignificant, or totally vanish. Decide any other point in issue against the defendants, yet, if this be in their favor, the injunction must be dissolved; because the injunction denies the prior right of choice, by *restraining it*.

Let me illustrate the truth of this position.

Suppose every allegation of the Bill, which the complainants' counsel insist, constitutes the equity of the Bill, to be unimpeached by the answer, to wit:

1. That the complainants are incorporated, and have complied with all conditions necessary to give them a corporate existence.

2. That the charter gives them them a right to obtain lands on doing certain things.

3. That they took the steps necessary to gain this right to the land in controversy.

Suppose all this to be true; yet, if there was resting, all the while, upon these lands, a prior and paramount charge in favor of the defendants, which could not be disturbed by these movements—that prior and paramount title, still existing, would forbid the continuance of this injunction, which operates to disturb and restrain it. It is like the case of a second mortgagee who does every thing necessary to perfect his right, so far as his own isolated claim is concerned, but who still remains subject to the rights of a prior mortgagee. These latter rights over-ride all that he has done, and leave these acts of his matters of no consequence in relation to such prior mortgagee. Let every other contested question in the case be decided in favor of the complainants, if the question of prior, paramount and continuing election be decided in favor of the defendants, the injunction which impairs, and restrains, and strips them of the right, cannot be maintained. This question, therefore, of prior right, meets the court at every turn. If decided in favor of the defendants, the injunction cannot stand; if, against them, there is then an end to the whole controversy, at least on this head.

I should proceed, at once, to show the existence of this prior right of choice in favor of the defendants, but that we are met, at the threshold, by the objection, that this question is not now proper for the consideration of the Court, but must await the final hearing. Why is it not proper for consideration, on the question to dissolve? Because, we are told, that this court has decided, in the case of *Delaplane, &c. vs. Parker, &c.* that, “on motions of this kind, the court is confined to the case as shewn by the bill, or rather to so much of it as exhibits that foundation of equity whereon the injunction has been rested, and upon which, if at all, it must continue to repose, and only so much of the answer is to be taken into consideration as is responsive to the case as thus set forth by the bill. If the materials of which that case is composed, be denied, the injunction must be dissolved; but if they are admitted, or not denied, the in-

junction must be continued ; and that, too, notwithstanding the owner may have advanced matter in avoidance, which, if established at the hearing, will be a ground for dissolving the injunction ; and, also, be a complete bar to all the relief prayed for by the Bill.” Without questioning the soundness of this principle, or insisting on its true measure and meaning ; but admitting it in the utmost latitude of the terms in which it is expressed, does it shut out the enquiry of this prior right, on this motion to dissolve ? It is said that it does, because this question of prior right forms no part of the material allegations on which the equity of the Bill rests ; but is *new matter* in avoidance stated in the answer. The meaning of *new matter* in avoidance, is, that it is something *new* in relation to the case made by the bill—something not called for by the allegations of the bill—not *responsive*, therefore, to any allegation of the bill. But if this question of *prior right* be among the allegations of the bill, the answer affirming it, is not the statement of new matter in avoidance, but is responsive to the bill ; and if it be not only among the allegations of the bill, but be, also, an allegation material to the equity of the bill ; then the answer contradicting the bill, in this particular, is responsive to it ; and if the matter be vital to the equity of the bill, the contradiction given to it by the answer, authorizes us to call for a dissolution of the injunction, on the very principle of *Delaplane vs. Parker*.

What is the fact with regard to the allegations of the bill ? Is the question of prior right, on the part of the defendants, among these allegations, and is it denied ? Not only is it among the allegations of every one of these bills, and the right denied, but, in every bill, the injunction is prayed only “till the prior right claimed by the defendant shall be decided.” [*See the bills, and their prayers, which were here read and commented on by the counsel.*] *App. C.* We see, then, that this question of prior right of the defendants is distinctly brought forward by the bill, and is emphatically denied.

The answer, on the other hand, as distinctly and repeatedly asserts the existence of this prior right, and rests the claims of the defendants on it. It is, therefore, not *new matter* in avoidance of the allegations of the bill ; but is old matter, directly responsive to the allegations of the bill.

Objection.—This allegation of the bill is only brought forward, incidentally, in consequence of the complainants having, in the bill, here introduced the subject of our bill in Washington county.

Answer.—It was their own choice to introduce that bill, and if they had meant to make no other use of it, than to show that we had obtained an injunction against them, for which this was to be the retaliation, they might have stopped with the statement of that fact : for this bill of their’s, *in this Court*, was no answer to our bill in Washington county. They were not called upon *here*, therefore, to deny the prior right, in answer to that bill ; but having, for their own purposes, introduced the subject, they felt the vital importance of

denying it here : and they have denied it, as a substantial allegation of *this bill* ; and, having denied it, they have opened themselves to an answer on the same point, and made an assertion of this prior right responsive to the bill. The answer, then, on this point, is not *new* matter in avoidance of the bill, but matter directly responsive to it. Was it an allegation material to the equity of this bill ? I have shown that it constitutes the very gist of the controversy : for, if my own argument were inconclusive on this point, the very prayers of their bill, in asking for the continuance of the injunction, *only till the prior right shall be decided*, shows that they understood it to be the very hinge of the dispute, and *the terminus of the controversy* ; and their prayer seems to admit, that, if this point shall be decided in our favor, there is an end of their claim. Since, then, the answer insisting on the prior right of the Chesapeake and Ohio Canal Company is, in this particular, responsive to the bill, and since the allegation which it thus contradicts, is vital to the equity of the bill, the case of *Delaplane vs. Parker* becomes an authority in our favor ; and if the question of the continuance of the injunction is to depend on the mere averment of the bill, on the one hand, in a matter vital to its equity, and the denial of the answer, on the other, on that very point, the injunction, on that authority, must be dissolved.

Still, they say, that this question must be suspended till the final hearing. Why ? Is it a question which calls for proof under a commission ? Is it a disputed *question of fact*, to be settled by the evidence of witnesses ? No. It is a question of law—to be settled by a reference to the laws, and which can be just as well settled *now*, as at the final hearing. It depends solely on the charter of these several corporations, whether the prior right exists or not. No depositions can vary it in the slightest degree ; because depositions cannot vary the constructions of laws ; and the question is precisely the same now, and appeals to the very same tests, and must be decided by the very same standard, as it will, and must be decided on the final hearing, and by no other standard. Why, then, defer the decision ?—more especially since the prayers of the bills have put the continuance of the injunctions solely on the decision of this very question of prior right.

Among other arguments which have been urged in support of the injunction, it is insisted by the counsel on the other side, that the injunction ought to be continued until the final hearing, to give the court an opportunity of ascertaining, by actual surveys, and evidence taken on the ground, whether both works cannot be conducted along the same bank of the Potomac : and, it is said by the counsel, that the alleged incompatibility of the charter depends on this fact ; a fact which can be settled in no other way, than by the evidence of surveys, reports and depositions, taken on the ground. Now, it is to be observed, that the injunction which bars the operations of the Chesapeake and Ohio Canal Company, *runs down to the low water mark of the Potomac*, and extends from the “Point of Rocks” to “Cumberland :” so that, through that whole extent of country, so

long as this injunction shall be permitted to stand, the defendants are effectually barred from performing a single operation on that bank, in advancement of the great national work committed to their care.

The position which the defendants hold themselves ready to make good, is, that both under the charter of the Potomac Company, which is their's, by assignment, and under their own charter, they have an absolute right to carry their canal along the left bank of the Potomac, and to choose their own route; that this was a right secured to them by charter, and by the plighted faith of the sovereigns, who were alone interested in it, before the complainants, as a corporate body, came into existence; and they insist on being permitted to exercise this right, without molestation or hindrance of any kind; and, surely, if they can maintain this position, the right is undeniable.

On the other hand, the complainants, the junior company, insist on injoining the senior corporation, until it can be ascertained whether the junior company cannot conduct their road, also, along the same bank.

But what authority has this, or any other Court, to incumber the exercise of a chartered right, with a condition not found in the charter? Our prior charter gives us a certain right, unfettered with any condition in favor of any corporation which might be subsequently called into being by any one of those sovereigns who gave the first charter. Our right, under our charter, being, then, unfettered with any such condition, is it within the compass of judicial power, so to fetter it? Would it not be engrafting a new and substantive condition on our charter; and is it competent to judicial power to do this? Would it not be an exertion of legislative, not of judicial power? The injunction is directly in the teeth of our chartered rights. Our charter says we may proceed along the left bank of the Potomac: the injunction says we shall not, and the argument which I am now answering, asks the court to continue this obstruction, till it can be ascertained whether both we and the junior company cannot get along on the same bank. The argument misconceives the true point in debate, as raised by the pleadings: that point is, which of the two companies has the prior choice of route?—and the injunction was originally asked, only till this point could be ascertained. How is this point to be ascertained? Surely, by a comparison of the charters, only. If, on this comparison, it be ascertained, as we insist it will, that we have the prior right of choice, there can be neither law, equity, nor reason, in disturbing its exercise, until it can be seen whether the other party cannot get along, also; if they can get along, also, let them get along when and as they may; but do not hinder us from getting along, according to our right, for the purpose of making an enquiry, in which we have no concern. If we have the prior and paramount right to proceed with our canal along the left bank of the Potomac, and to choose our route according to our judgment, what is it to us who else can get along after us? The surveys, therefore, which are asked for, are matters with which, we have no manner of concern; and let these surveys result as they

may, they will leave this question of prior right precisely where it stands at this moment, and to be decided by precisely the same tests. For, suppose the surveys to result in the ascertainment of the fact, that by each works pursuing the respective route prescribed by the report of the surveyors, both works may get along on the left bank : is *this court* to decide that we *shall take the route prescribed by the report*? Is it possible to imagine that the court will take such a liberty with our charter? By our charter, *we are to choose our own route* : where does the Court of Chancery of Maryland get the right to choose it for us? If a route is to be forced upon us, by the authority of this court, are we not deprived of the important franchise secured to us by our charter, of choosing our own route? Would not such a decree be a violation of our charter? Would it not impair the obligation of our contract; and if the law of Maryland, which has created the Rail Road Company, warrant such a decree, is not that law unconstitutional, on the ground of its impairing the obligation of the pre-existing contract, arising from the first charter?

I can see no possible benefit which can arise from the proposed surveys, in regard to the only question which is here in dispute. They can give the court no facility in deciding a question which depends solely on the construction of charters, and which must remain, after all, to be decided by this sole criterion, let the surveys eventuate as they may. Let us suppose the surveys which are now asked, to have been made and returned; and to have ascertained that, by pursuing given routes, both works may get along on the left bank. It is admitted that this is all that can be expected from them. Let me, then, admit the fact to be already ascertained—that both works can, by pursuing given routes, get along on the left bank. Does not your Honor see that the question presented by these pleadings still remains; to wit, which has the choice of route: and do you not see that, after all the delay which these survey will occasion, you will still be brought back to the very question which now presents itself, and, in deciding it, be forced on that construction of the charter which must be decided the same way after the reports, that it must be decided before them.

Why, then, should we be delayed for years, by an order for these surveys and reports, which, after all, and *in any possible event*, must leave the question of right exactly where it stands now? for no lawyer will pretend that the construction of the charters can be affected by these surveys and reports; let them result in what they may, the charters must be construed on their own face.

Our charter, the joint grant of three sovereigns, has assured us that we shall have the right to occupy the left bank of the Potomac with a canal, according to our own choice of route. Perceiving that this would interfere with the prior rights of the Potomac Company, they made provision for a transfer of the *rights* of that company, by their own consent, and for their own advantage, and *they* have been regularly transferred by their own consent, to the Chesapeake and Ohio Canal Company. That rival, the only one in existence, being

removed, our right to proceed along the left bank, according to our own choice of route, became *absolute*: and it does seem to us to be monstrous, that a court of *one* of the sovereigns from whom our charter has proceeded, shall, on the motion, and in behalf of a newly created company, created by *one* of the *same* sovereigns who gave us our charter, debar us from the exercise of the right thus solemnly pledged to us, until it shall be ascertained by surveys and reports, whether our exercise of this right may not interfere with the accommodation of the *new* company. If this new company has the prior and paramount right, let it be so decided at once. If they have not, it is to us perfectly incomprehensible, how the existence of their posterior right can be made to stand in the way of the exercise of ours.

If there be room only for one of the works, let that Company take it which has the first right: if there be room for both, let that Company take the choice to whom the prior right of choice belongs. *All that we ask is a prompt decision of the right.*

There is no consideration of law or of equity, and good conscience, that can justify the inevitable delay of these extensive surveys and reports, except the supposition of *coeval and equal* rights in *both* companies. But to this, neither of them pretends. Each claims for itself, *the priority of right*; and this question must sooner or later be met, and met on a construction of the charters. Why, then, delay it? The delay must be manifestly prejudicial to that Company which has the prior right: and why should this delay be inflicted, since the question is just as ripe for decision *now*, as it can ever be; and, more especially, when the decision of it is invited by the very terms in which the injunction was asked and granted: to wit—"till the question of prior right can be decided."

The delay may be a very good *ruse de guerre*, on the part of that Company, which is conscious of the infirmity of its title: it is a species of stratagem, however, to which it can hardly be expected, that a court of equity and good conscience will lend itself. Such a court will readily collect the sense of the parties, as to their own rights, by observing which of them it is that asks the delay, and which it is that resists it.

We humbly insist that this is the time, and this the motion, on which the question of prior right arises, and we do most earnestly and respectfully pray that it may be now decided.

Objection.—It is said, again, (and this is another *dilatory plea*,) that this prior right is a question of law, and to be decided only in a court of law.

Answer.—1. Why, then, is it asked to be postponed till the final hearing? For if it is to be decided by your Honor, at the final hearing, is it not the Court of Chancery which is to decide it?—and if it be decided by this same court, at the final hearing, why shall it not be decided now.

2. Is it proposed that you shall ask the opinion of the Court of Appeals on this subject, *pendente lite*: if, by the laws of Maryland, you have the power to ask it, why not ask it now? Your decision of

it the one way or the other, which will open the case to an appeal, is the only mode in which you can ask the opinion of the Court of Appeals; and why not ask it now, in this mode?

3. But again: The parties have not, in their bill, prayed a reference of this question, to a court of law. They have not asked that we shall be enjoined, until the question can be decided *at law*. The bill contemplates no such course of proceeding. It manifestly contemplates, that *this court* shall decide the question of law, and, we presume, that it is competent to this court to decide every question of legal right involved, incidentally, in the proceedings before them. It is not a *disputed fact*, like a question of coterminous boundary, where the court might enjoin, till the fact should be tried at law, by a jury. It is a question of the construction of charters—like the case of Penn vs. Lord Baltimore, in the English Chancery: and as perfectly fit for this court, as for any other. The injunction is not asked, till the question can be tried *at law*. It is not granted, till the question shall be tried *at law*, but until the coming in of the answer, and notice to dissolve. Time enough has been already lost, by the pending of the injunction; and *we would rather have a decision against us now, on the construction of the charters, than to have this question longer delayed.*

Objection.—It is objected that *we* asked an injunction in Washington county, until the question of prior right should be decided; but, in that suit, it is said we have taken no step to have the question brought before a court of law.

Answer.—The bill in that case contemplates no reference of the question to a court of law: on the contrary, it proposes to have the question of prior right tested by the short process of an application for an injunction, *by the court* to whom the bill was presented. But what steps were we expected to take, in that case, to carry the question to a court of law? It is not a case for an issue of fact; for it is a question of law, and not of fact. That the court of Washington has not, before this time, pronounced on the question of right, is no fault of ours, nor have the Defendants in that case, who are the complainants here, answered that bill to this day, so as to bring the question to a hearing. They have, therefore, *by their own delay*, prevented that case from having received a decision upon the right before this time.

Some obscure intimation was thrown out, as if your Honor was expected to refuse to dissolve *this injunction*, till *that* was disposed of; and as if the question of right was to be held in suspense *here*, until decided *there*. There is no ground for such a suggestion, unless the opposite counsel suppose that this court is to take part *with them*, in a war of injunctions against the court of Washington county; and to hold up this injunction, as a measure of belligerent retaliation on that court. *This case is ripe for dissolution, on the question of prior right. That case is not ripe for dissolution, by the delay of the Defendants to answer that bill.* If that injunction ought to have been dissolved, it is their own fault that it has not been dissolved. Shall they

take advantage of their own fault, then, to insist on a continuance of the injunction here? But what has this court to do with a proceeding in a different tribunal? This court has full power to act on all cases before it: its action is totally independent of the Court of Washington county. If this case be ripe for decision, on the motion to dissolve, this court has as ample powers to decide on the question of the construction of these charters, as the court of Washington, county. Why then wait for *its* construction? Why wait for a movement in the cause in Washington, which the complainants themselves have failed to mature for decision, when this case is ready, and the power of the court ample to decide it.

I have thus, I think, cleared the cause of all obstructions to a decision on the question of prior right. I have shewn that this question does inevitably rise on this motion. That it is a question arising on the construction of the charter, before the court, and, therefore need not wait for surveys, reports and evidence, which cannot change that construction either one way or the other: that it is a question, so vital to the cause, that the whole controversy rests upon it: that, if we have the prior right, the injunction ought to be dissolved—if not, it ought to be perpetuated.

To this question of prior right, I now proceed. We claim it on two grounds—

1st. As assignees of *all the property, rights, and privileges* of the Potomac Company, under their charter of 1784. (See Appendix D.)

2d. On the ground of the charter to the Chesapeake and Ohio Canal Company, itself.

1. As the assignees of all the property, rights, and privileges of the Potomac Company, under their Charter of 1784.

These rights were transferred to us under the authority of the 13th section of our Charter. The effect of the transfer is declared, in the same section, to be this: “And, thereupon, the charter of the said Potomac Company shall be, and the same is hereby vacated and annulled, and *all the rights and powers thereby granted to the Potomac Company shall be vested in the Company hereby incorporated.*” Now, if the Potomac Company, by virtue of their charter of '84, had right and power to occupy, with a canal, the ground on the left bank of the Potomac, that right belongs to us by the assignment of their charter, and we take it, *with relation, back to the date of their charter—that is, the year 1784*; and this injunction, which obstructs us in the exercise of this right, ought to be dissolved.

This calls upon us to inquire, what were the rights and privileges of the Potomac Company, as declared in their charter? They are found in the 4th Section of that law, “to cut *such canals*, and erect *such locks*, and perform *such other works as they shall judge necessary*, for opening, improving, and extending the navigation of the said river, above tide water, to the highest part of the North Branch to which navigation can be extended, and carrying on the same, *from place to place, from time to time*, and upon such terms, and in such manner as they shall think fit.”

“To cut such canals, and erect such locks, and perform such works as they shall think fit.” What limit is there here, either to the number of canals, locks, or works which they may erect? *None but such as may be prescribed by their own judgment*, “as they shall judge necessary.” Suppose that they should think one canal only necessary, and that along the whole margin of the river—is there any thing in the charter to restrict them in this respect? Nothing. *The whole subject is referred, exclusively, to their judgment.* Suppose that, in experimenting on this subject, they should try one plan, and find it to fail; is there any thing in the charter to tie them down to their first selection, and prevent their changing it, and trying some other? Nothing. *The whole subject is still referred to their sole judgment*, and they are authorized to proceed, *from time to time, and in such manner as they shall think fit.*

There were, for example, three modes of improving the navigation of the river:

1. By sluices.
2. By dams and locks.
3. By continuous canal and still water navigation.

They had power to try the first: but suppose they find it to fail, what is there to prevent them from trying the second? And we learn, from the reports, that they did this very thing, in part. And, if they found both the first and the second to fail, what was there in the charter to hinder them from trying the third? Manifestly nothing. The language of the charter is as broad as language can be: the intention of the Legislature being to tie them down to no particular mode, but to leave the whole subject to their own *experience, observation, and judgment.* It is very clear that, after the reports of the various Engineers employed upon this subject, in 1820 and '22, (see Appendix B) had ascertained that a continuous canal was the best mode, the Potomac Company would have resorted to this mode, if their funds had enabled them to do so. Suppose they had done so, and had been brought before a court of Maryland on a *quo warranto*, the presenter alleging that they were confined to the charter, to improving the bed of the river, could the *quo warranto* have been sustained? Is there one word in the charter which restricts them to the bed of the river? Not one. This notion is inferred from general language, which does not sustain it; and such an inference could never stand, on a *quo warranto*, against the clear, positive, and unlimited terms in which their powers are described in the 4th Section.

Let us make this comparison.

The language of the section, standing alone, certainly commits the whole subject of the *manner* to the judgment of the President and Directors. Is there any thing in the language of any other part of the act to place a limit on the powers given by the 4th Section? But, before I proceed to comment on the passages relied on, as producing this effect, it may be proper to remark, that all that the Legislature had in view, in this charter, was the accomplishment of one grand object—the extension of the water communication, by means of the Potomac and

its tributary streams, from tide water, as high up as it could be carried. The Legislature did not propose to prescribe the manner of doing this; they were in no situation to prescribe the manner; for it required the aid of Engineers, of surveys, of comparisons, and of calculations. The Legislature had no such lights to guide them. All that they cared for was the *accomplishment of the object: the manner* was entirely immaterial to them, and they have left it to the sole judgment of the Company. They knew that, among other manners of improving the navigation of the river, they *might* conclude to resort to sluice navigation; and there are expressions in the law which shew that they were aware that this manner might, and probably would, be chosen by the Company. *Upon the hypothesis* that this manner *might* be chosen, the Legislature required and exacted that canals should be made around the Great and Little Falls: points so well known to them all, that they were aware of the impossibility of overcoming the difficulties at those points, by the means of sluices. They do not limit the number of canals which the Company *may* make. They say, in effect, "make as many of them as you please, but we exact it of you, that, adopt what manner you may, you shall adopt none which shall relieve you from the necessity of making canals, at least around the Great and Little Falls." And this is the only dictation upon the subject of *manner* which is to be found in the whole act; and can it be argued, with any fairness, that the Company were at liberty to make no other canals than those two? This was not the contemporaneous exposition of the act, for they did make others, not only without question, but the Legislature, as to some of them, subsequently recognized the power, by giving directions as to the erection of toll-houses at them. The canal at the mouth of the Shenandoah, and that at Hook's Falls, are of this description. Now, it might be much more fairly argued, that the Legislature, by specifying the canals at the Great and Little Falls, meant to prohibit the making of all others, than has been argued, on general words, that the Legislature meant to restrict the Company, in their improvement of the navigation, to the bed of the river; and yet we see, in the instances just specified, that no such restriction, on the number of canals, was intended, from the specification of the two at the Great and Little Falls.

Now, suppose that the Potomac Company had become convinced of the folly of relying on sluice navigation, at the "Point of Rocks," and other points along the river, where mountains run down to the shore, and, by the continuation of their bases under the water, produce rocks and shallows; and had determined to make canals at all these places, what is there in the charter to prohibit them from doing it? Even if the charter had contemplated that they should adhere to the bed of the river, *generally*, (which it does not,) still, it gives them the power of leaving that bed, *whenever, in their judgment, a canal would be better*. They might, then, have made canals at all the difficult passes which the complainants, in this case, have attempted to secure. Nor could any purchaser of the lands along these passes,

have bought these lands, discharged from this lien of the Potomac Company; unless it can be successfully maintained, that, having once selected sluice navigation, at these passes, they are bound by that first selection, and are forever debarred from correcting their error, by a canal. But there is not one word in the charter which favors this idea. The language of the 4th section clearly disproves it. Nor can it be believed, that the Legislature, intent as they were, on the accomplishment of the great object in view, have intended to defeat it, by binding down the Company, *in perpetuum*, to every *faux pas* they might commit, in experimenting on a work, then new in our country.

But what is there in the charter to justify the inference, that the Legislature meant to tie the Company down to the bed of the river, and thus to narrow the general language of the 4th section? To maintain this proposition, the opposite counsel rely on the title, "*An Act for opening and extending the navigation of Potomac River;*" and, also, on the preamble, "*Whereas the extension of the navigation of Potomac River,*" &c. This language is thought to be synonymous with opening and extending the navigation of the bed of the Potomac river, and to prohibit them from leaving that bed, except at the points specified, the Great and Little Falls. But the inference is wholly unwarranted: for this is the language used on all occasions, even when the extension of the navigation of the river was to be effected by opening canals. It is so used, repeatedly, in the law, and the Legislature itself has thus fixed a clear meaning to the language. So, in the preamble: the "*cutting canals, erecting locks, and other works, are specified as among the acts which may become necessary for improving the navigation of the river.*" So, also, in the 4th section, "*cutting canals and erecting locks*" is again enumerated among the means necessary for extending the navigation of the river. So, in the 9th section, "*that, for and in consideration of the expenses the said proprietors will be at, not only in cutting the said canals, erecting locks, and other works, for opening the different Falls of the said river, and in improving and extending the navigation thereof.*" So, in the 17th and 18th sections. The latter section closes with these words: "*and in case the said Company shall not complete the navigation, through and from the Great Falls, to tide-water, as aforesaid, within ten years after the said Company shall be formed, then shall all interest of the said Company, and all preference in their favor, as to the navigation and tolls at, through, and from the Great Falls, to tide-water, be forfeited and cease.*" Is it the bed of the river that is meant here? and was it intended that the navigation should be carried *through the bed of the same, at the Great Falls?*

So, in the Maryland act of 1790, section 6, "*And be it enacted, that the President and Directors of the said Company, for the time being, may, from time to time, apply any part of the capital stock of the said Company, and, also, the tolls, as they may arise, in opening, improving, and extending the navigation of the branches of the said river, above Seneca, provided that no such application shall be made,*

until the main river, from tide-water, is cleared to Fort Cumberland. According to the mode of reasoning on the other side, this proviso would demonstrate, that the *main river*, that is, its *bed*, was to be cleared from tide-water to Fort Cumberland; and the *Great Falls*, of course, *blown up with powder, or dislodged with crow-bars*.

The act of 1784, section 17, is supposed to be decisive proof that the Potomac Company were tied down to the bed of the river in their improvements of its navigation. The last sentence of that section is supposed to contain this proof. That sentence is in the following words: "That the tolls hereinbefore allowed to be demanded and received, at the Great Falls, are granted, and shall be payable, on condition only, that the said Potomac Company shall make the river well capable of being navigated, in dry seasons, from Payne's Falls to the Great Falls, by vessels drawing one foot water; and from the Great Falls to tide-water; and shall, at or near the Great Falls, make a cut, or canal, 25 feet wide, and four feet deep, with sufficient locks, if necessary, each of 80 feet in length, 16 feet in breadth, and capable of conveying vessels, or rafts, drawing four feet water at least; and shall make, at or near the Little Falls, such canal and locks, if necessary, as will be sufficient and proper to let vessels and rafts, aforesaid, into tide-water, or render the said river navigable in the natural course."—(See Appendix D.)

In the first place it is fit to remark, that this section speaks, first, of making the river capable of being navigated at dry seasons from Payne's Falls to the Great Falls, and from the Great Falls to tide-water; and, in the next place, that it distinctly presents the alternatives of making the river navigable by canals, and of making it navigable in its natural course; clearly indicating, that making the river navigable by a canal was making the river navigable in the sense of the law.

We are asked whether, if the Potomac Company had resorted to a continuous canal, they could have demanded tolls under this section, *the river being dry*? To which I answer, that, if there were a navigable canal along its shore, *navigable in dry seasons*, for vessels drawing one foot water—that Company could demand tolls; because, in the clear sense of this law, the river Potomac is navigable, when a collateral canal, fed by it, is navigable. On the opposite construction, tolls could never be demanded under this section at all, because that construction would require the Company to make the bed of the river navigable through the Great Falls, as a pre-requisite to the demand of tolls; a thing impossible, in its nature; and the Legislatures, themselves, show that this was not their sense, by requiring a canal at the Great Falls. The whole argument is an attempt to deduce a defect of power from a verbal hypercriticism, which is refuted by the act itself, in every sentence. It is needless to press this point farther, because the Court must be satisfied, from the obvious sense of these laws, that the river Potomac is made navigable, when it is effected by canals along the shore of that river; the great object being effected, it is manifest that the Legislature did not mean to quarrel with the means.

The location of the toll-houses, at the several falls, is supposed to be inconsistent with the project of a continuous canal, and to prove that the tolls were paid merely for the making of the canal.

What, then, was paid for deepening the bed of the river, where it was deepened? Nothing! No inference, in favor of the opposite construction, can be fairly drawn from the location of the toll-houses. They are placed, and naturally and properly placed, where the greatest difficulties were to be encountered, and the greatest expense incurred. They are at the same points at which they would have been placed, if a continuous canal had been adopted. 1. Because those would still have been the places of the greatest difficulty and expense. 2. Because, it being required to have a lock-keeper at those points, there would be a saving of expense, in reducing the number of officers, by making the keeper of the locks the gatherer of the tolls: and, 3. Because, with regard to the boat-men, themselves, the tolls can be more conveniently gathered while the boats are detained in passing the locks, than to stop them for this purpose alone at any other points.

The same thing is done at the New York canal, although that is a continuous canal. The toll-houses are, there, at the falls and locks, for the very reasons of economy and convenience, which have been suggested. To infer, from a circumstance so natural and proper, in all these respects, as the location of the toll-houses at the locks, or, (what is the same thing,) at the Falls, that the Legislature intended to confine the navigation to the bed of the river, and, by an inference thus rashly and unwarrantably drawn, to restrain the plain language of the section, in which the powers are given, *by enumeration*, would be a species of construction, which would come recommended, at least, by its novelty, to say nothing of its intrepidity.

Objection.—Continuous canals were then unknown; they are a discovery of the modern lights of science; and, therefore, cannot be supposed to have been within the contemplation of the Legislature in 1784.

Answer.—1. Continuous canals were not unknown; there were several such in Europe, and in Asia, for many years before. Their comparative superiority over other modes of improving the navigation of a river, was, perhaps, unknown; and this is all that the answer, in this case, is understood to affirm.

2. It may be very true that a continuous canal was not *specifically* within the contemplation of the Legislature in 1784. It may be admitted that sluice navigation, with occasional canals, was supposed, both by the Legislature, and individuals concerned, to be the manner of improving the navigation of the Potomac which would be adopted. But this is not the question. The question is, not what the individuals who composed the Legislature supposed would be the plan adopted; but whether the charter ties down, and restricts, the corporation to that plan. It is contended that it does not: but that the terms by which the powers are conveyed, are broad enough to enable the corporation to avail themselves of all the lights which the pro-

gress of science, and their own experience might, ‘*from time to time*,’ shed upon this subject. Such is manifestly the language of the 4th section; and if the progress of science, and their own experience, should at last suggest the continuous canal as the best mode, the charter is broad enough to authorize its adoption.

Objection.—Were the lands, in the vicinity of the Potomac, to remain forever subject to this incumbrance? Were the owners, and those to whom they might alien them, to hold them always subject to be cut through, at the pleasure of the Potomac Company?

Answer.—The objection supposes that the navigation of the Potomac was an incumbrance, and a curse to the valley through which it passed: whereas, for more than half a century, it has been considered, by the best and wisest men of our country, as among the greatest of public and private blessings; and who can doubt that it has been so considered by all the owners of lands in the valley of the Potomac? Which among these persons would not, at any time, have compounded for any supposed inconvenience, arising from this *incumbrance*, for the great advantage of a perfect and permanent navigation of this river? And, if there were capricious individuals, who thought differently, does not every man hold his land, throughout the whole United States, subject to the same species of incumbrance, to wit: that it shall be taken from him at a fair compensation whenever it shall be required for the public good?

The original charter of the Potomac Company limited them to the accomplishment of their work in a given time. But those who granted had the power to extend it, and did extend it; and so long as it was extended and kept up, it continued the same powers as were at first imparted.—(Sec Ap. D.)

Objection.—If the Potomac Company ever had the power of cutting a continuous canal, they have forfeited it, by *nonuser*, for 44 years.

Answer.—This objection seems to proceed from a misapplication of a well-known principle, applicable to corporations. A corporation may forfeit its *entire charter*, through *nonuser* of its franchises. But when, by its charter, these franchises may be exercised in various alternative modes, which it may change at its pleasure, the experimental trial of one mode, however long continued, has never been held a forfeiture of the other modes, the *charter itself remaining*. If the corporation has been endeavoring to exercise its franchise in one or more of these modes, there is no *nonuser* of the franchise which can forfeit the charter: and the charter remaining, there can be no partial forfeiture of any of the means of exercising those which still remain to be tried, and exist under the charter. If there be any case which establishes such a principle of partial forfeiture, we desire to see it. It is evident to us, that, if the charter remains, all the powers which it confers must remain, and, if it has been forfeited, then the forfeiture must be declared by a court of law, on a *quo warranto*.

Objection.—For the purpose of showing that the Legislature, in granting the Potomac charter, did not contemplate a continuous canal, you are requested to compare the language of the two charters—

that to the Potomac Company, and that to the Chesapeake and Ohio Canal Company.

Answer.—The difference between the two charters is precisely that which ought to have been expected from their relative objects. The charter of the Chesapeake and Ohio Canal Company *contemplated a continuous canal, and no other work.* The Potomac charter contemplated *no specific work*—it looked to the great object to be accomplished, leaving the mode of accomplishing it wholly to the Company. That the language of two charters, thus differing in object, should differ in their language, is not at all wonderful; nor does it furnish any inference against the powers of the Potomac Company. We never contended that the charter of the Potomac Company contemplated a continuous canal as the *specific mode of improving the navigation of the river.* If we had so contended, we might well be called on to account for the difference of language between that charter and the charter of the Chesapeake and Ohio Canal Company. But our position being, that the charter of the Potomac Company gives them a *general power to adopt any mode which they thought best*, while the charter of the Chesapeake and Ohio Canal Company *ties them down to the single mode of a continuous canal*, any difference in the language of the two charters, in reference to this subject, must be wholly inconclusive in fair reasoning.

Objection.—The act of 1802, c. 84, p. 138, (of Maryland alone,) recites in its preamble, that “whereas *the whole object* of the Potomac Company had been accomplished”—yet, there was no continuous canal; and this proves that *a continuous canal was not contemplated*—the whole object being declared to have been accomplished without it.

Answer.—It proves, what we have always admitted, that the great *desideratum* was the extension of the navigation of the Potomac; and whether accomplished by the one or the other of the three modes that have been mentioned, the object would have been equally accomplished, and the result equally satisfactory to the States. We have never supposed that *any specific mode was limited by the law.*

Objection.—The charter of the Potomac Company was forfeited by their non-execution of the work, within the time limited by their charter.

Answer.—A charter which has once taken effect, can never be forfeited but by the judgment of a court. The founders of lay corporations are the *visitors*. The States who granted the charter can alone vacate it, by the judgment of their courts. Until they shall have done so, no individual can treat it as forfeited, and act accordingly. The States who granted the charter, and who had alone the right to visit the corporation; who had the exclusive right to sue out a *quo warranto*, and to vacate the charter, have not taken this step. On the contrary, those who alone could question the legal continuance of the Company, have not only not questioned it, but have treated it as a subsisting company, with full subsisting rights. In the charter to the Chesapeake and Ohio Canal Company, they have so treated it. They have put the very creation of the new company on

the condition that the Potomac Company shall consent to surrender their charter to them. They have required of the new company, as one of the fundamental laws of their charter, that they shall receive the stock of the Potomac Company in payment of subscriptions to the new stock, and that they shall receive the evidences of debt due from the Potomac Company, in part subscription to the new stock. They thus consider the Potomac Company as a subsisting Company pre-occupying *the ground by their prior and exclusive franchise, and declare that it shall give way only on their voluntary surrender to the new Company*, and by becoming merged in the new Company, by the transfer of their stock and debts to the new Company. While the sovereigns, then, on whose pleasure alone the continuance of the charter of the Potomac Company depended thus treat it as in full life, shall a private individual, or a private corporation, call upon a Court in Maryland to regard it as a non-entity?

I have thus considered every argument that has been urged:

1. To show that the Potomac Company were restricted to the bed of the river.

2. To show that, if they ever had a right to have a continuous canal, they have forfeited it by *nonuser*.

3. To show that the Company had forfeited its charter before the present Company came into existence.

I think it has been shown that these objections are wholly untenable.

That that Company was in full life until they surrendered their charter to the Canal Company.

That, by the 4th section of that charter, all the means of extending the navigation of the Potomac were still open to them—unlimited, except by their own judgment.

That they had it, therefore, in their power, under their charter, to have made a continuous canal, up to the time of the surrender of their charter to the Chesapeake and Ohio Canal Company, on the 15th of August 1828.

That, by this surrender, under the operation of the charter of the Chesapeake and Ohio Canal Company, this power, possessed by the Potomac Company, became *eo instanti* the power of the former Company.

So that there was never a moment of time when the ground was not pre-occupied by the Potomac Company, or their assignees—the Chesapeake and Ohio Canal Company.

The Chesapeake and Ohio Canal Company are thus the purchasers of all the rights of the Potomac Company, *for valuable consideration*.

For valuable consideration—

1. Because they have taken their stock as a part of the new capital.

2. Because they have assumed their debts, in receiving them in payment of subscriptions for stock in the new company.

The whole course of this transaction was open, public, and notori-

ous. The several acts of 1824, establishing the Canal Company, had given notice to the world that this transfer was to take place. They had announced the conditions and considerations for which it was to take place, and they had announced, by the same public acts, that the legal consequence of this transfer would be, that the Chesapeake and Ohio Canal Company would, thereby, stand seized of all the *property, rights, and privileges of the Potomac Company.*

The Rail Road Company had thus fair notice of the whole course of this proceeding, and of its consequences.

If they are correct in the position, that they commenced the acquisition of their titles on the Potomac, before the Chesapeake and Ohio Company had a legal existence or legal rights, they encounter the Potomac Company, which, it cannot be denied, had an existence long before, and had all the legal rights which their charter then gave; and since these legal rights continued down to the transfer, to the Chesapeake and Ohio Company, there never was an instant when the complainants could have gone upon the ground without meeting the pre-emptive right of the Potomac Company, or of their assignees and successors. As taking the place, therefore, of the Potomac Company, we claim the prior right of selecting our route along the shores of the Potomac, and, being the prior right, it is one which the acts relied on by the complainant cannot disturb.

II. We claim this prior right, as existing under the charter of the Chesapeake and Ohio Canal Company itself, independent of the derivative rights which it holds under the Potomac Company.

1. As a right created and existing in our behalf, prior to our incorporation, by the joint compact of Maryland, Virginia, and the United States; a right, *in abeyance*, 'till our incorporation; but even, in that condition, placed beyond the power of recall by the act of any one of the parties to the compact.

2. As a right which had actually attached, and become vested by our incorporation, prior to any of the acts on which the complainants rely as founding their inceptive rights.

1. The charter of the Chesapeake and Ohio Company was a compact between the States of Maryland, Virginia, and the United States, represented by the Congress and the President of the United States. The various acts which confer this charter are not separate and independent acts of legislation by these several sovereigns, but they are, on their face, joint and dependent acts, resulting in a compact flowing from the united consent of all. Virginia, for example, does not legislate for herself, on the foundation of her own separate sovereignty, and place the efficiency of the act on her own power. On the contrary, she makes her act to depend on the concurrence of the other sovereigns and parties concerned. The 1st section is, "that so soon as the Legislatures of Maryland and Pennsylvania, and the Congress of the United States, shall assent to the provisions of this act, and the Potomac Company shall have signified their assent to the same, by their corporate act," &c. This act, then, was in the character

of a proposition offered to the other Legislatures for their acceptance, assent, and confirmation. It is so considered by the State of Maryland, who, after reciting the act, say "*Therefore, be it enacted by the General Assembly of Maryland, That the said act of the General Assembly of Virginia be, and the same is hereby accepted, assented to, and confirmed,*" and thus ratify it *on a condition introduced by themselves*, that is, they introduced a new term into the proposed contract. "*Be it further enacted and declared, That the said act of Virginia has been accepted and confirmed by the Legislature of Maryland, on the express condition, that the act of Congress, contemplated by the twenty-first section of the Virginia act, shall direct and provide some safe and practicable mode whereby such lateral canal or canals may be secured to the State of Maryland, and whereby, also, it may be determined whether such lateral canal or canals will injure the said Chesapeake and Ohio Canal, within the meaning and intention of the said twenty-first section of the Virginia act.*"

Then comes the assent of Congress to both acts. The title of this act is "An act confirming an act of the Legislature of Virginia, entitled 'An act incorporating the Chesapeake and Ohio Canal Company, and an act of the State of Maryland, confirming the same.'"

Again, in the year 1826, the State of Maryland wishing to modify the compact thus formed, but conscious that she could not do it, by her single authority, made a proposition to that effect by an act to amend the act incorporating the Chesapeake and Ohio Canal Company. The first section of this act places the amendments which it proposes on the express condition, "*That this act receive, in like manner, the assent of the necessary parties.*" and the 4th section is in these words, "*And be it further enacted, That this act shall commence and be in force as soon as it shall have received the assent of the Legislature of Virginia, of the Congress of the United States, and of the Potomac Company.*"

Then Virginia assents to the change, by her act of 26th February, 1827.

Congress, in like manner, gives *its assent*, by the 3d section of of the act of 23d May, 1828.

And the *Potomac Company* gives *its assent*, by their resolutions of the 10th July, 1828.

The State of Maryland proposed other modifications which were, in like manner, put on the condition of their receiving the assent of the other two parties: and they all did, in like manner, receive that assent.—(See Appendix.)

It is, then, *a compact*, to which the States of Maryland and Virginia, the United States of America, and the Potomac Company, are all parties, each contributing a portion of its sovereignty and separate rights, for the creation of a corporation for the common good of the whole. It is not the creation of a monied corporation, like a bank, for its own emolument. It is the creation of a corporation to effect a great national object, for the good of the whole. What is

that object? It is answered in the Preamble. "Whereas, a navigable canal," &c., and after describing its direction, &c. &c., continues, "will be a work of great profit and advantage to the People of this State, and the neighboring States, and may, ultimately, tend to establish a connected navigation between the Eastern and the Western waters, so as to extend and multiply the means and facilities of internal commerce and personal intercourse between the two great sections of the United States, and to interweave more closely all the mutual interests and affections that are calculated to consolidate and perpetuate the vital principles of Union," &c., &c. [See Preamble to the incorporating act of Virginia, passed January 27, 1824.] Here, then, is a great common object to be accomplished by the common consent of all the sovereigns interested—to be accomplished by means; which neither separately possessed; by means of the river Potomac, which neither separately possessed: but which was the common property of Maryland and Virginia, so far as it divided their territory, and of the United States, so far as it constituted a part of the District of Columbia. Neither of these parties could, by its single authority, authorize a dam to be constructed across the Potomac, for the purpose of supplying a feeder to the canal, without committing a trespass on the other.

Again: It was not certain at the date of the charter of 1824, whether the canal would run on one side or the other of the river, or whether it might not be most advantageous, to cross, occasionally, on aqueducts, and to use both sides. To give the canal every advantage, it required the use of both sides, at the discretion of the Company, under the advice of their Engineers: hence the concurrence of both the States was necessary to give to the object all the advantages contemplated. But neither Maryland nor Virginia could run the canal into the District of Columbia; hence it was necessary to have the concurrence of Congress; nor could those States make a compact except under the sanction of Congress; hence, also, it was necessary to call for that sanction.

But as one State might, by its Legislature or its Courts, disturb the action of the institution, it became necessary for the stability of the enterprise to place it beyond the power of recall, at the pleasure of any one of the parties to it: hence it was made to assume the form of a *compact*, irrevocable, except by the consent of all the parties to it. That it is a *compact*, is demonstrable by every test that can be applied to it. The parties mutually consulted each other at every step. Every measure was in the form of a proposition, and was, upon its face, to have no effect till assented to by the other parties: and the charter is now the result of mutual consultation, mutual concession, and mutual agreement, for an object of mutual good.

What is a compact? What definition can be applied to it, that will not fit this case? Is it the agreement of two or more minds in an object of common interest, which is to be done, or forborne, and which can be done or forborne only in virtue of such agreement?

Every feature occurs in this case ; the object, is one of common interest, could be accomplished only by an act of all : a *mutual consideration is paid by each for the mutual advantages gained by each.* Maryland and Virginia impart to the corporation to be created valuable portions of their eminent domain, to wit :

The right to use the waters of the river :

The right to use the individual property on both sides of the river as the necessities of the canal might require :

The right of exacting tolls on the one side, and on the other : and in consideration of the advantage to be derived from the canal by those mutual concessions of the States, Congress grant to both the right to run lateral canals, from the main stem, through any part of the District of Columbia. And the Potomac Company surrender their charter to the new Company in consideration of the advantages which they were to derive from their participation in its profits. Thus, as between the two States, the United States and the Potomac Company, the charter is an executory compact, founded on mutual consent, and on valuable consideration, paid all around ; and from the circumstance of its being a compact, these consequences result :

1st. That it is irrevocable, except by the consent of all the contracting parties.

2d. That no one State can, by any subsequent grant to another, in the slightest degree narrow or interfere with the rights granted by that compact. For to say that any one State can do this, would be to say, that any one party to a compact may depart from it at pleasure : It would be a partial revocation to narrow our right, granted by the previous charter ; and a power to revoke, partially, is a power to revoke in *toto*.

Objection.—This charter is not a compact—nothing more than a permission being given by these sovereigns, to pass through their respective territories.

Answer.—1. This is changing the terms, without changing the substance of the proposition. For, if these permissions, granted by these several sovereigns, were reciprocally the consideration for each other, it is as much a matter of compact, so far, as if the compact were more comprehensive.

2. But it is not a mere permission to pass through ; it is a permission to pass through clothed with various attributes of imparted sovereignty ; it subjects the lands through which they may determine to pass, to compulsive acquisition for the use of the canal ; it gives them the power of collecting tolls, for passage, within the respective territories of these sovereigns ; it declares the franchise real property, and *exempts it from taxation in all time to come.* This is not a mere permission to pass ; it is a right of passage, clothed with great and valuable privileges ; it is a right to pass along the shores of the Potomac, and appropriate to the use of the canal the waters of that river, and all its tributary streams, together with a right of compulsive acquisition of the soil ; and all this as a matter of compact

among the sovereigns, and as a matter of compact wholly irrevocable, in part or in whole, by any one of the parties to it.

Will it be said that this was not a compact, because there were no negotiations, and nothing *in treaty form*, between these sovereigns? This would be to allege that a State cannot contract by its laws. But that a State may so contract, has been established in an infinite number of cases.

In *Hunter vs. Fairfax*, the State of Virginia did contract, in the form of a law, on the subject of the Northern Neck.

The State of Georgia contracted, in the form of a law, in the *Yazoo* case of *Fletcher vs. Peck*, 6 Cranch, 87.

The State of Virginia and Kentucky contracted, in the form of a law, by the compact of 1789, as recognized in the case of *Green vs. Biddle*, 8 Wheaton, p. 1; and that a charter is a compact, though in the form of a law, is recognized and admitted by the Supreme Court in the case of *Dartmouth College vs. Woodward*, in 4 Wheaton, 518, and arguendo in the cases of *Jewett vs. Taylor*, 9 Cranch, 43, and the town of *Pawlet vs. Clarke*, 9 Cranch, 292.

We contend, therefore, that the charter of the Chesapeake and Ohio Canal Company is *a compact* among these sovereigns, and that, therefore, whatever rights it does grant, are unalterable by the act of *any one* of these sovereigns.

Let us now proceed to inquire whether this charter granted a prior right which was in full force at the time that the acts were done, on which the complainants rest *their prior* right.

I contend—

1. That, as soon as the charter of the Chesapeake and Ohio Canal Company took effect, in the year 1824, and prior to the organization of the Chesapeake and Ohio Canal Company, there was a prior right to choose their route, created in behalf of the company, when it should come into existence; which prior right was irrevocable by the act of any one of the sovereigns.

That this prior right existed, independent of any acts to carry it into effect.

That this right, though in abeyance (to use a technical term) till the company was formed, was beyond recall, and could not be invaded by either of the sovereigns, or by any grant of either of them, to any other company or individual.

That this was a subsisting right, down to the organization of the company, and that, on the instant they became a corporation, by the subscription of the capital, it became a vested right, with relation back, in point of time, to the date of the charter; and that all intervening and interfering claims must give way to this prior right.

2. I contend that, if it were necessary that the Chesapeake and Ohio Canal Company should have come into corporate existence before this prior right could arise in their behalf, they did come into corporate existence, and, consequently, this prior right did arise before any of these acts were done by the complainants, on which they rely as

giving them the preference of route ; and that the answer, in averring this fact, is responsive to the bill in a matter of fact, and must therefore be taken as true.

I shall contend that this right existed independent of any acts to carry it into execution, such as location, contracts with the owners of lands, or writs of *ad quod damnum*.

That if a location were necessary to designate the choice of route, in order to constitute a prior and exclusive right, such a location was made, and was known to the complainants before they commenced their operations of location, purchase, and inquisition.

1. By the charter itself, and before the organization of the company, a prior right to the choice of route was granted, which was in abeyance, but irrevocable till the formation of the company, but which attached at the instant of their formation, and excluded all intervening and interfering claims.

To present this point clearly to the Court, let us suppose that, in 1825, when, by the consent of all the parties to this compact, the charter became complete, *there had been a corporation in existence* to take the rights given by the charter ; and let us inquire what rights they would have taken by it ? These rights are to be ascertained :

1. By the preamble which explains the object of the charter.

2. By the 4th section, which enumerates the powers of the intended corporation.

3. By the 15th and 19th sections, which authorizes the compulsive right of passage for the canal.

1. The preamble sets out the object of the charter ; the construction of a continuous canal from tide water of the river Potomac, in the District of Columbia, to the mouth of Savage Creek, &c. "*to be fed, in its course on the east side of the mountain, by the river Potomac and the streams which empty therein.*" This is the work which was contemplated ; and its location was required to be such as that it might be fed by the river Potomac and the streams which empty therein. The valley of the Potomac is, therefore, indicated, by the charter itself, as being the bed of the intended canal.

The powers necessary to effect this object, are given by the 4th, 15th, and 19th sections of the law. I am now supposing, for the sake of argument, the company in existence at the date of the act ; and it is manifest that they would have taken immediately the powers therein enumerated. What are these powers ?

The 4th section gives them the power (*a present power on the supposition that the company was then in existence*) to cut canals, erect dams, open feeders, construct locks, and perform such other works as they shall judge necessary and expedient for completing the canal hereinbefore mentioned and described.

The 15th section opens thus : "And whereas it is necessary for the making of the said canal, locks, dams, ponds, feeders, and other works, that a provision should be made for condemning a quantity of land for the purpose, *Be it enacted*, That it shall, and may be lawful,

for the said President and Directors, &c. to agree with the owners of any land through which the said canal is intended to pass," &c.; and, in case of disagreement, it authorizes the company to proceed, by a writ of *ad quod damnum*, to condemn; and declares that, on the payment of such valuation, the company shall be seized of such land as of an absolute estate in perpetuity.

The 19th section provides "that whenever it shall become necessary to subject the lands of any individual to the purposes provided for in this act, and their consent cannot be obtained, it shall be lawful for the company to enter upon such lands, and proceed to the execution of such works, as may be requisite; and that the pendency of any proceedings, in any suit in the nature of a writ of *ad quod damnum*, or any other proceedings, shall not hinder or delay the progress of the work."

Now, is it not manifest that the route of the canal was, by these sections, committed to the choice of the Company, *in the then existing state of things*? What was the existing state of things at that time? There was no other rival corporation in the field, of the one character or the other—no canal company, no rail road company—nor turnpike company—there were only individual proprietors lying along the shores of the Potomac. But their lands had been subjected to the right of passage secured to this great public corporation, in the modes prescribed by the act; and with regard to the right of passage, they had taken the place of the sovereigns under whom these individuals held. These sovereigns holding the eminent domain, had a right, themselves, to condemn any portion of these lands of individuals for a public use. This right they had imparted, by this charter, to the Chesapeake and Ohio Canal Company. The company took the place of these sovereigns, *quoad hoc*, and their right could be no more disputed than the right of these sovereigns themselves, so far as the route they might select called for the exercise of this eminent domain.

Was it necessary *to the existence of this right of selection* that they should locate the route, or purchase the land or condemn it? It was indeed, necessary, *on exercising this right*, that they should do these things. But was it necessary *to the existence of the right of selection itself*, that they should do these things? Are not the right, and the exercise of the right, different things? The right is the previous existence—the exercise is a mere consequence of the pre-existent right. Your Honor, for example, has the right of deciding this cause, according to your judgment: can gentlemen deny the existence of your right, until you shall have exercised it, and shewn by your decision, how you will exercise it? Whether you decide it the one way or the other, or do not decide it at all, still the right is equally clear and indisputable.

Again, the right of eminent domain is in the State. This right, and its exercise are, certainly, very different things. If the charter had limited a time, within which the right should be exercised, and

had declared that if not exercised within this time, by the Chesapeake and Ohio Canal Company, it might be exercised by any other corporation that might be called into existence; then, indeed, after the lapse of that time, having failed to exercise it, any other corporation, properly authorized, might supersede them. The charter has done this. It says, in the 20th section, they shall begin the work within two years after they shall have been formed; that they shall complete one hundred miles of the canal within five years; and that the entire eastern section shall be completed in twelve years; and that, if they fail, in either of these particulars, the charter shall be forfeited. But, within these limits, the right of choosing the route is a full, subsisting, prior right. The right is the right of choosing the route; and prior, because first in time: granted when there was no rival corporation in the field—no competition.

Now, with this right, taking its date in the year 1825, a right flowing from the first compact of all these sovereigns, and consecrated by that compact, was it competent to either of them, singly, to constitute another corporation with power to invade the right, and take it from the first grantees?

The analogy attempted to be borrowed from general land warrants, is entirely fallacious. The warrants themselves give no priority of right to locate: all the holders of general land warrants are on a perfect equality, and because there is no priority among the holders of the land warrants, it is the act of location which creates the prior right, and that by positive legislation. Here, on the contrary, it is the grant which, *proprio vigore*, creates the prior right, and this totally independent of any act of location. It is asked, whether the holder of a general land warrant shall hold it up for an indefinite length of time, and prevent the holder of another land warrant from locating it, on the assertion of prior right? No, I answer again: because it was never pretended that a general warrant gave any such prior right. But here the charter does give the prior right, and as to the time for its location, that is limited by the charter in the manner that has been mentioned. The only analogy to be borrowed from land warrants, is not from general land warrants, but special land warrants, which *do give title*, which no general land warrant can, except by prior location. For here our rights are limited to the valley of the Potomac, and its tributary streams. It is, then, a prior right, located by our charter itself to the valley of the Potomac. It is a right which, by the charter itself, is made dependent on the Potomac, the vital current that is to supply it; and is thus, so special, as to dedicate to our use, so far as the selection of our route requires, the whole valley of that river, on both shores.

I hold it to be clear, then, that, if the Company had been in existence in 1825, when the charter became complete by the consent of all the parties, they would have taken a vested prior right to choose the route of their canal, along the left bank of the Potomac; a *vested right*, independent of any act of location, survey, contract, or writ

of *ad quod damnum* : and one which neither of the sovereign parties to our compact could have disturbed by a grant to another corporation, until after the lapse of that time, on which the charter itself had predicated its continuance : and, in that state of things, had any subsequently formed company attempted to forestall our right, by pre-occupying the ground, no court of chancery would have hesitated to enjoin them from such interference. Now, would it have varied the existence of the prior right granted by this charter, even had it been the fact, that our Company was not in being, to take the right, when granted, nor until after the creation of the Rail Road Company, and the acquisition of their rights ? This is precisely the question between us.

The complainants say, that we could acquire no rights under our charter, till we, ourselves, had a legal existence : that we had no legal existence till the election of President and Directors, in June, 1828 : that our rights are to date from that time, which was subsequent to their charter, and the acquisition of their rights, by purchase : and, consequently, that our right is not *prior* to theirs, but *subsequent* to it. On the other hand, we say that our rights are co-eval with the completion of our charter, to wit, 1825, when the act took effect, by the assent of all, on whose assent its operation was predicated : that though the Chesapeake and Ohio Canal Company had no legal existence at that time, and, consequently, no capacity to take, yet, the rights created for the intended corporation, even at that time, passed from the grantors, and were in abeyance while *their* commissioners, (i. e. *the commissioners appointed by these sovereigns themselves,*) were taking the step necessary to form this Company : that though these rights were in abeyance, during that period, they *were in existence, and beyond the power of recall* : that, as soon as we came into existence, these rights attached, and had relation back to the time of the grant, displacing all intervening and interfering rights, and, consequently, displacing all the pretended intermediate rights of the complainants.

That the charter created the prior right in question, if there had then been a body in existence, capable of taking that right, has been already shown.

But it is alleged—

1. That no grant can have any effect, until there is a grantee in being, and capable of taking the grant.

This is precisely the question which has been so often before the Supreme Court, and which has been so uniformly decided in opposition to the other side. A grant in favor of a non-existing *person* is of every day's occurrence : a grant, for example, to the unborn son, of A. ; a grant to A. for life, remainder to the heirs of B., he being still alive, and his heirs, consequently, unascertained, or even unborn. In fact, in all the cases of contingent remainders, to persons not *in esse*, the case occurs of an estate created, where there is no one to take it. Now, according to the doctrine on the opposite side, all grants of this kind would be void. But this, we know, is not the case. The

grant is a valid grant: the estate is a subsisting estate, and vests, as soon as a person comes into being who meets the description in the grant. Where the estate rests, in the mean time, has been disputed among the writers. Fearné says it remains in the grantor, or his heirs. Preston, on the contrary, holds that it passes out of the grantor, and remains in abeyance. [2 Preston on Abstracts, 100, 3 W. 253.] But both agree that it is an estate, which, having been once created, has passed beyond the power of the grantor, and beyond his resumption or modification; and that there is no *revertor* in favor of him, or his heirs, until a sufficient time shall have been allowed, to see whether the contingent remainder man will come into being.

I do not understand this proposition to be controverted, as it applies to estates created in favor of natural persons, who are not yet in being; but it is supposed that a different principle applies, where the grant is made in favor of a corporation, which has not yet come into being. But the distinction is merely ideal, and has been several times refuted by the decisions of the Supreme Court of the United States.

The case of the town of Pawlet was the case of a grant, before the revolution, to a non-existing church in New Hampshire. No church came into existence before the revolution, and it was insisted that the grant could not take effect, for the want of a grantee; that the title remained in the grantors; and that, by the revolution, the State took the place of the grantors.

But what say the Court?

“A grant by the Crown for a non-existing parish church, may take effect *by the common law*, as a donation, *ad pius usus*.” “After such donation, it would not be competent for the Crown to resume it at its own will, or alien the property, without the same consent which is necessary to the alienation of other church property.” “Under such circumstances, until a church should be legally erected, and a parson regularly inducted, the fee of the lands granted would remain in abeyance, like the *hereditas jacens* of the Roman law, in expectation of an heir.” [The Town of Pawlet vs. Clarke, et al. 9 Cranch, 292.]

Again, in the case of Dartmouth College vs. Woodward, 4 Wheaton, 518. “When a charter is granted, and it brings the corporation into existence, without any act of the natural persons who compose it, and gives such corporation any privileges, franchises, or property, the law deems the corporation to be first brought into existence, and then clothes it with the granted liberties and property.”

“When, on the other hand, the corporation is to be brought into existence by some future acts of the corporators, the franchises remain in abeyance, until such acts are done, and when the corporation is brought into life, the franchises instantaneously attach to it.”

“There is no difference between the case of a grant of land, or of franchises to an existing corporation, and a grant to a corporation, brought into life for the very purpose of receiving the grant. As

“soon as it is *in esse*, and the franchises and property become vested
 “and executed in it, it is as much an executed contract, as if its
 “prior existence had been established for a century.”

Again, in the case of the Dartmouth College and Woodward, (p. 203.)

Unless there be a power reserved in such charter, it cannot be altered, (p. 202.)

That in such a case every interference with the rights granted by the charter is a violation of the Constitution of the United States, is apparent, not only from these cases, but that also of *Green vs. Biddle*, in 8th Wheaton.

The effect of these authorities is, that, if our charter, by its terms, created a prior right, (which I have shown it did,) this prior right passed from the grantors, beyond recall, by the charter itself, *at the date of the grant*: that though it was in abeyance until we came into existence, still, in that condition, it was an estate beyond recall, like the *hereditas jacens* of the Roman law, in expectation of an heir; and that, as soon as we came into existence, this right attached to us, and became vested in us, with relation back to the date of the grant, displacing all intermediate and interfering rights derived from the same grantors, and, *a fortiori*, displacing all such rights, when derived from one, only, of the grantors. That it attached, with relation back to the date of the grant, is not only manifest from the authorities, but stands upon the clearest principles of reason: for when it passed from the grantor, at the date of the grant, for whose benefit did it pass? And while it was in abeyance, for whose benefit was it in abeyance? Even on the principle of *Fearne*, that it did not pass out of the grantor, but remained in him till the grantee came in existence, still he admits that the rights, thus created, are unalterable, and vest, with relation back to the date, as soon as the grantee does come into existence.

Having thus considered the question, on the ground of strict law; let us now take it up on the ground of reason and right; of equity and good conscience.

Here is a case of several sovereigns uniting, in publishing to the world a charter, to incorporate the Chesapeake and Ohio Canal Company, with certain rights defined in that charter. They proclaim, by this charter, that the Company, when formed, shall have certain specified rights. These sovereigns, themselves, appoint *commissioners* for the purpose of collecting subscriptions, in order that the Company may be formed. They say to the public, “subscribe, and “as soon as one fourth of the capital is taken, you shall be incorporated, and become possessed of these rights.” In the mean time, these sovereigns, themselves, go on to survey the route, and estimate the cost, for the purpose of demonstrating to the public the practicability of the enterprize which they propose. The reports of these surveyors and engineers are published to the world. They, themselves, propose the left bank as the best route, and the public are invited to form their calculations on that bank.

In full reliance on the faith of this charter, the public subscribe: these sovereigns themselves subscribe. The subscriptions are filled up, to

the amount required to make them a corporation ; and when, by their charter, they have become incorporated, and are looking to the execution of their charter, in good faith, they find that a rival, started by one of these sovereigns, without any consultation with the rest, has gone and pre-occupied the ground, and that they are to be driven from all the advantages of that choice of route, on the faith of which they had made and paid their subscriptions, and this Company had been incorporated. Does not reason, and justice, and conscience, revolt at a proceeding like this ? And, if permitted to succeed, is it not a violation of the faith of our charter ?—the subversion of the fundamental conditions on which our contract rests ? And, if so, do not reason and common sense, and common honesty, confirm the decision which we have shown that the law has pronounced upon our right ?

Objection.—Is this right to remain in abeyance, *in perpetuum*, in order to see whether the Company can be formed, and these sovereigns to be forever debarred from starting any useful project on the same ground ?

Answer.—This was a question for these sovereigns, themselves, when they gave this charter ; not for individuals, nor for this Court. They have given a charter, fixing no limit, in point of time, within which the Company shall be formed. If reason fixes a limit, what is that limit ? It is a *reasonable time*. But who is to judge of the reasonableness of the time ? The founders of the corporation. Have *they* pronounced the time unreasonable, and the charter, therefore, as a *void charter* ? On the contrary, through the whole of the three years, charged as unreasonable, they have been continually legislating, amending the charter, up to the time of the actual incorporation, treating it, therefore, as a continuing charter, and thereby admitting that there has been no delay which affects its existence. But if there has been delay, whose delay was it ? Not the delay of the corporation, for they had no existence ; but the delay of these sovereigns themselves. For the Commissioners, who were collecting these subscriptions, were their officers, not ours ; were acting under the orders of these sovereigns, as expressed in their charter ; not under our orders. These sovereigns, themselves, then, by their agents, collected these subscriptions, up to the time of the incorporation, and afterwards subscribed themselves ; (for both Maryland and the United States subscribed afterwards ;) and you are yet called on to decide that the time thus consumed was unreasonable, as against these sovereigns, who were themselves the consumers. As to the time consumed, after this Company became a corporation, in waiting to call a meeting of the Stockholders, to choose a President and Directors, this is accounted for by our answer. Who is to judge of the reasonableness of this account, with reference to the continuance of the charter ? The founders on a *quo warranto* for *non user* : for we were then a corporation, and there could be no forfeiture, but by a judgment of Court. But the founders of the corporation, instead of complaining of that delay, have approved it ; and one of them, the State of Maryland, was a subscriber, after that alleged delay, which is supposed to have forfeited the charter.

Our argument is, that, prior to our actual incorporation, by the subscription of one-fourth of our stock, this prior right of choice existed in our favor, and could not be disturbed by a rival grant; more especially, by a rival grant from one of the sovereigns who had united in giving ours.

II. But if it were necessary that we should have come into corporate existence, and that this *hereditas jacens* should actually have vested, in order to give it the effect of keeping off intruders; it *did vest*, by our incorporation, in October, 1827, which was prior to those acts of contract and warrants of condemnation, on which the complainants found their right. Now, whether we had a corporate existence, or not, is a question of fact, put in issue by the bill and answer; and, being a question of fact, the answer is decisive, according to the case of *Delaplane vs. Parker*. They say, that they wish proof to show that these subscriptions were conditional; but the account given by the answer, is responsive to this allegation, and completely overthrows it.

Objection.—We were not incorporated till a meeting of the Stockholders was called, and that meeting had ascertained that one-fourth of the capital had been subscribed.

Answer.—I do not so understand the charter; the third section provides, that as soon as one-fourth of our stock shall have been subscribed, we shall be incorporated into a company by the name of “The Chesapeake and Ohio Canal Company;” that we may sue and be sued; and, as such corporation shall have perpetual succession, and a common seal; and that the *estate, rights, and interests* of the Company shall be deemed and taken to be real estate; and, *thereupon*, i. e. *after we have become incorporated*, it shall be the duty of the Commissioners to call a general meeting of the stockholders, to elect a President and Directors. So that our actual incorporation, instead of being made to depend upon this call, is to *precede it*; and the call is to be the *consequence of the previous incorporation*. This call is to be made for the purpose of electing a President and Directors; which is, *itself*, a corporate act, and presupposes a corporation.

Objection.—Who is to ascertain when one-fourth of the stock is subscribed?

Answer.—The commissioners appointed by the Executives of the several States—for *they are to make the call*, and, therefore, must have first ascertained that one-fourth of the stock had been subscribed; and the call of the stockholders, required by the third section, is clearly for the purpose of electing a President and Directors, and not for the purpose of ascertaining the fact that one-fourth of the stock has been subscribed. The third section begins as follows: “That, whenever one-fourth, or a greater part of the said stock, shall have been subscribed, in the manner aforesaid, then the subscribers, their heirs, and assigns, shall be, and are hereby declared to be, incorporated into a company, by the name of the Chesapeake and Ohio Canal Company,” &c. The words “in the manner aforesaid,” are supposed to mean “shall be ascertained in the manner aforesaid;” but the clause is

"shall have been *subscribed in the manner aforesaid.*" And the reference is to the first section of the law which describes the *manner of subscribing*. The first section goes on to recite that "the said commissioners shall cause books to be opened at such times and places as they shall think fit, in their respective States, and in the District of Columbia, under the management of such persons as they shall appoint for receiving subscriptions to the capital stock of the company hereinafter incorporated ; which subscriptions may be made *either in person or by power of attorney* : and notice shall be given in such manner as may be deemed advisable, by one or more of the said commissioners, of the time and places of opening the books." The words "shall be subscribed in the manner aforesaid," mean—1. Shall have been subscribed in books opened by these commissioners in Maryland, Virginia, and the District of Columbia. 2. Shall have been subscribed in person, or by power of attorney. 3. After due notice of the time and places of opening the books.

Objection.—The second section makes it perfectly clear that the act of incorporation takes effect only upon a call of the meeting of the stockholders.

Answer.—That section proves no such thing. It has not a single expression which puts the date of the incorporation upon the call thus required ; that is not at all the office or aim of that section. The call required by the second section, is a call to be made *after the commissioners shall have closed their books* ; a time which has not yet arrived, because the books are still open. "And the said commissioners," says the second section, "shall cause the books to be kept open at least forty days : and, within twenty days after the expiration thereof, shall call a general meeting of the subscribers at the city of Washington ; of which meeting, notice shall be given," &c. : "and the commissioners, at the time and place aforesaid, shall lay before such of the subscribers as shall meet, according to the said notice, the book containing the state of the said subscriptions ; and if one-fourth of the capital sum of six millions of dollars should appear not to have been subscribed, then the said commissioners, or a majority of them, at the said meeting, are empowered to take and receive subscriptions to make up such deficiency, and may continue to take and receive such subscriptions for the term of twelve months thereafter," &c.

By the first line of the section, the commissioners are required to keep open their books *at least* forty days ; this is the *minimum* ; they may keep them open as much longer as they please. The section then proceeds : "and within twenty days after the expiration thereof." After the expiration of what ? After the expiration of the forty days ? Surely not, for this would be to convert the *minimum* into a *maximum*, and to prohibit them from keeping open their books longer than the forty days. If it does not mean within twenty days after the forty days, what else can it mean, but "after the expiration of the time during which they shall choose to keep the books open ?" The section, then, contemplates the fact of the commissioners having closed their books, and having closed them under two alternative situations.

1. Under a deficiency of subscriptions, and in despair of completing them.

2. Under a redundancy of subscriptions which requires to be pruned.

If they shall *have closed their books* under either of these aspects, the second section proceeds to direct what shall be done. They shall call a meeting of the stockholders, and lay the books before them ; and if, on this inspection, the first appears to be the case, the section says the project shall not yet be abandoned, but the books shall be kept open twelve months longer, to see whether the requisite sum cannot yet be obtained. If, on the other hand, the books shall present the other aspect of a redundant subscription, the section proceeds to describe how it shall be pared down.

The last proviso—"that unless one fourth of the capital shall be subscribed, as aforesaid," i. e. in case the books shall have been closed on a deficiency of subscription, and one-fourth cannot be obtained within twelve months after the meeting of the stockholders, consequent upon such close, then "all subscriptions made in consequence of this act shall be void : " "and that, in case one-fourth and less than the whole capital shall be subscribed as aforesaid, (i. e. under the circumstances contemplated by the section, to wit : of the books having been, in the first instance, closed on a deficiency,) then, the said commissioners, or a majority of them, are empowered to go on and receive subscriptions." So that the whole section looks to a case which has not yet occurred—a close of the subscription books, and a close of them either under circumstances of deficiency or of redundancy.

The whole section is *merely directory*, as to what *the commissioners shall do*, when they shall determine to close their books under either of the circumstances aforesaid : *not having one single provision which looks to the designation of the point of time when the subscribers shall be considered as incorporated. To designate this time, is the peculiar and single office of the third section.* The 3d section begins, "that whenever one fourth, or a greater part of the said stock shall have been subscribed *in the manner aforesaid.*" Will it be said, subscribed in the manner set forth in the 2nd section : i. e. subscribed after the books shall have been closed by the commissioners, either under a deficiency or a redundancy ?—subscribed after a call of the stockholders shall be made upon a close of the books, in a state of hopeless deficiency, or overflowing exuberance ? Could it have been the intention of the Legislature, that the company should not become incorporated, unless the one fourth *exactly, no more nor less*, should have been gained under such peculiar and critical circumstances ? Could they have been guilty of such folly and madness, as to put the success of a project so dear to them, on such an unnecessarily perilous cast of the die ? The construction would be preposterous. No, they were done with the subject of the second section—that critical case had been disposed of—provided for : and *now*, in the third section, they resume the general legislation for the furtherance of their object : and the words, *shall be subscribed in the manner aforesaid*, allude simply to the manner in which subscriptions are directed to be taken by the first section.

There is, then, I apprehend, no force in the objection that the corporation is to take date from the call of the stockholders, required by the second section, since the third section makes this call a consequence of the previous incorporation : and this call is merely for the purpose of electing a President and Directors.

Objection.—It must take date from the call of the stockholders, because such a published call was necessary, to give the world notice of their corporate existence, and that their corporate rights had arisen, so as to put all other parties on their guard.

Answer.—1. This may, in the view of our adversaries, be a good reason why the date of this corporation should have been predicated on this public call. But the Legislature have thought differently—they have not put it on that call, but on the subscription of one-fourth of the stock. They alone have the power to say when the corporation shall arise, and so far from making that call the date of the corporation, they have made it the mere consequence of the previous incorporation. The call is made, because the corporation has taken effect, and it is made for the mere purpose of electing executive officers—a purpose which, in itself, implies the previous corporation ; because such election is the act only of a body already incorporated.

2. Who were to be put on their guard, as to the fact that our corporation had arisen ? According to our view of the subject, the only persons interested in knowing that fact, were the corporators themselves. The riparian proprietors, along the Potomac, required no such notice.* The published charter had informed them of the contemplated canal, and that this canal would certainly pass through the lands of some of them. They knew that, by the general laws of the land, their property was liable to be taken at a fair valuation, whenever it was required for public use, and that it could not be taken without notice, nor without a fair valuation. What advantage could have been derived to them, from notice of the specific time at which the Company had become incorporated ? Could they, with that knowledge, have done any thing to ward off the passage of this canal through their land, even if it had been desirable ? If they could not, as they manifestly could not, of what use would this knowledge have been to *them* ?

The real, though disguised meaning of this argument about public notice to put people on their guard, is neither more nor less than this—that the Rail Road Company, having the notice, might the sooner have been put on the *qui vive*, and have run down upon the Potomac, to secure these same difficult passes, which they take care to say in every bill, they did not secure *merely for the purpose of obstructing the Chesapeake and Ohio Canal*: which can mean nothing more nor less than this, that although this was one of the purposes, it was not the *only* one ; and whether this be a purpose so moral, or so legal, as to have required notice to be able to accomplish it, this court and the several other tribunals before which this question is to come, are to decide.

But if, indeed, a published call of the stockholders was necessary to our incorporation, and fixes the date of our incorporation, that

call took place in March, 1828—*before the inception of the rights alleged in the bill*, and our rights were consequently vested by our incorporation before the commencement of those rights on which the bill relies. This fact is stated by the answer, and is conclusive, because responsive to that allegation of the bill, that we were not an organized corporation before their measures to acquire these titles had been taken. The answer in averring every fact which was essential to our incorporation, is responsive to that part of the Bill which denies this character, and is conclusive on this head.

Objection.—The charter was not a charter until accepted by the Stockholders, and it required a meeting of the Stockholders to say whether they would accept it.

Answer.—This is not the case : because the mere subscription was an acceptance of it by every one who subscribed, and required no farther expression of acceptance.

Objection.—We took no powers under the charter till we were organized by the election of the President and Directors—none, at least, relative to the acquisition of land for the passage of our canal, and the 4th and 15th sections prove it.

Answer.—All our franchises *attached* by our incorporation. The President and Directors were merely the executive officers, to carry the pre-existing rights into effect. All our rights arose when our charter was completed. Before our incorporation these rights were in abeyance ; but as soon as that event took place, they immediately attached, and became vested rights ; and the President and Directors appointed by us, were merely the officers designated by the law to carry our pre-existing rights into effect. If, therefore, our rights did not *attach* till the appointment of the President and Directors, they arose upon the charter, and were in abeyance till we should become incorporated, and these officers be appointed ; and, then, they attached with relation back to the date of the charter.

This closes my view of the question of prior right.

If I have succeeded in maintaining the existence of this right, under the charter, it must be manifest that it is perfectly immaterial whether we had, or had not, designated the precise route of our canal, before the Rail Road Company came into existence. My position is, that we had the right to elect our ground on either bank of the Potomac : and that, to shut up either bank against us, as this injunction does, is a violation of our chartered rights. When the Rail Road Company came into existence, they saw the charter of the Chesapeake and Ohio Canal Company, and could not but have known that this broad right of election was open to them. It is no apology, on their part, to say, that they did not know what route we would choose. Sir, if this were necessary for them to know, they did know it. They knew, at least, that we would take the left bank of the river. The surveys and reports of the Commissioners, which are before you, and which were made preparatory to our charter, and some of them accompanying it in point of time, had proclaimed to all the country that the left bank of the river presented the proper *route* for the canal. These

surveys and reports were the acts of the sovereigns, themselves, who gave us our charter : they were presented to the world, in explanation of our charter ; were published to prove its practicability, and thus to assure the public confidence in the enterprise, and to invite subscriptions. They are part of the representations which led to the compact between the sovereigns, and the subscribers to the Chesapeake and Ohio Canal Company. And yet, the counsel on the other side say, that these surveys and reports “ were not made *for us*—they were made for “ the public ; for *them, too* : it was mere hap-hazard and luck, on our “ part, that we have the benefit of them.” Sir, let these surveys and reports be inspected : it will be found that they have reference, only, to a *continuous canal* ; not to a rail-road. They connect themselves immediately and palpably with our charter, and constitute a part of the inducements to our contract. These surveys and reports were notice enough to the Rail-road Company, that, in seizing on the left bank of the river, they were seizing on that which had been previously granted to another company. But this seizure itself, and the sleepless zeal with which it has been urged, contains, in itself, the evidence, that our route was understood, and that the design was to forestall us. What do they themselves, in their various bills, describe and admit to have been their object ? “ They deputed engineers to pass along the said *route*, and wherever the character of the ground was such as to leave but little choice as to the location of said road, OR TO PRESENT BUT ONE PASSAGE, to make, at once, an actual location of said road, over the same, designating it by well defined boundaries, so that said location might serve as regulating points for the intermediate sections, and might secure the passage of the road ; and, also, agents and attorneys to procure for you orators, a title to all the lands included in said locations,” &c. And when you come to look at the contracts filed with the bill, you find them directed to all these difficult passes, where the ground was such as to leave but little choice, or to present but one passage ; and these contracts call for the *low water-mark*, as the boundary. Now, against whom were these operations directed ? Who was there, against whom they could possibly be directed, but the Chesapeake and Ohio Canal Company ? Nay, lest you should doubt upon this subject, they go on to assure you, in all their bills, that they did not take these steps, “ *merely* to impede or obstruct the Chesapeake and Ohio Canal Company ;” and the constant repetition of the same form of expression, precisely in the same words in every bill, proves that it was the result of study and premeditation ; and that it thus admits that it was *partly* their purpose to impede and obstruct the Chesapeake and Ohio Canal, and partly to secure the single passage for themselves. They knew, therefore, and well knew, that the left bank of the river would, and must be our choice ; and this choice, it is the direct and admitted object of these operations to defeat. This object this injunction, connected with their contracts and locations, completely accomplishes ; for it effectually drives us from the left bank, into the river, below water-mark, or across the river.

Now, if your Honor thinks that they have a right to do this, we pray you to say so, at once ; that we may reach, as soon as possible, the Court of last resort, upon this subject. But do not keep our works hung up, by this injunction, and cause us to lose months and years for the proposed surveys, which, as I have demonstrated, must, at last, bring you back to the very question which is now presented—the question of prior right of choice upon the charters of the two companies.

The learned counsel who has opened this argument for the complainants, represents the State of Maryland as having sent both these rival companies into the field, armed with equal rights, and bid them (to use his own expression,) “ God speed,” in acquiring, as fast as they could, by competition, the titles of the riparian proprietors. I cannot deem so humbly of the wisdom or justice of the Legislature of Maryland, as to adopt the opinion, that any such project was entertained : I believe that its wisdom would have foiled so poor and suicidal a project ; and that its justice would have shrunk from the meditation of such a breach of the faith pledged by it in the charter of the Chesapeake and Ohio Canal Company.

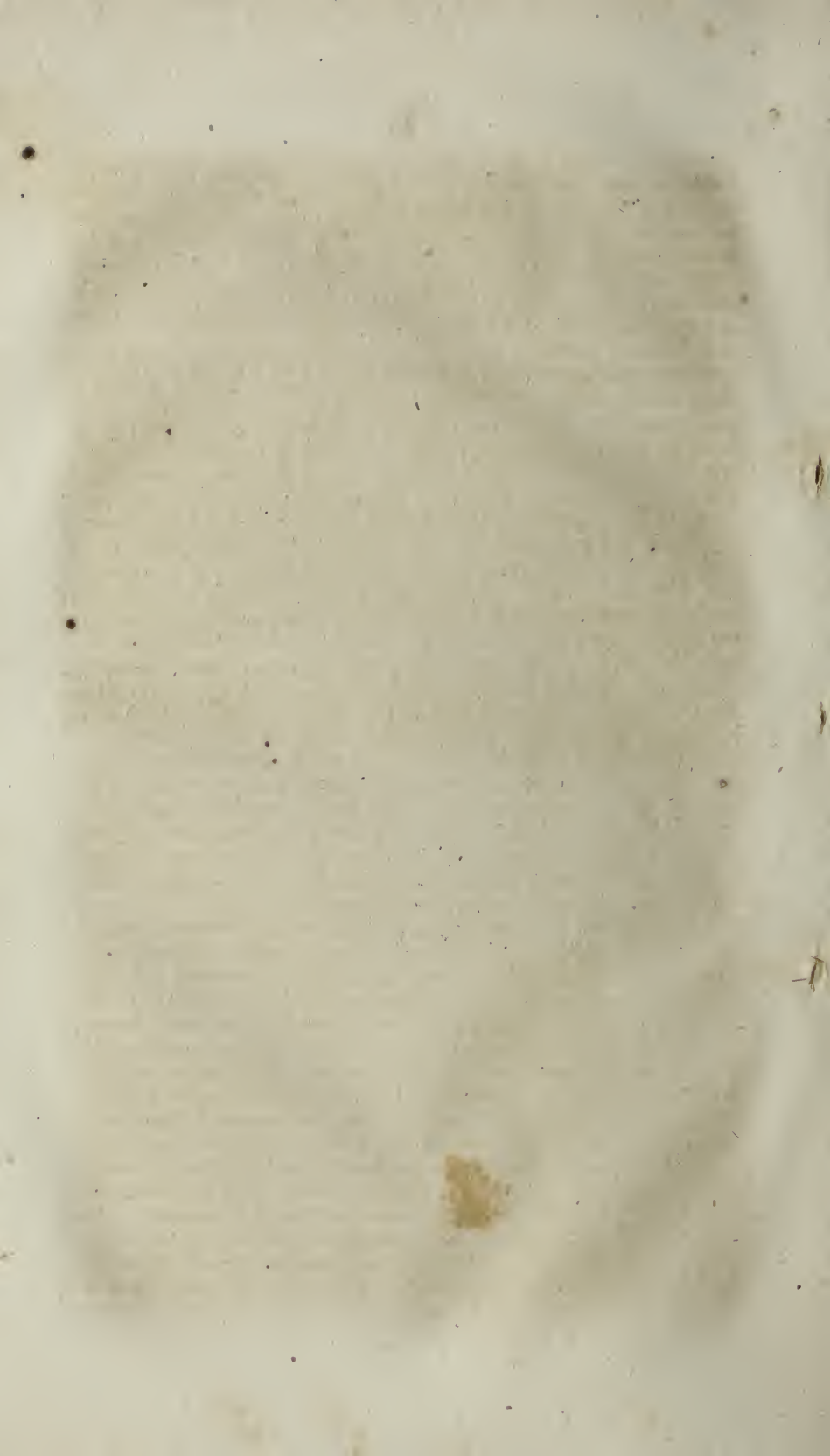
The argument on the other side perpetually confounds the acquisition of the title of the riparian proprietors, with that right of eminent domain which over-rides those titles. To whom was this eminent domain (or what is the same thing, a right of passage flowing from it,) first pledged ? This, and this alone, is the question here : for, whoever has this, has a right which cannot be ousted, by buying in the titles of the riparian proprietors. And were it not for the respect due to the injunction of this Court, I should advise my clients to proceed in the execution of their work, just as if nothing had been done by the Baltimore and Ohio Rail-road Company, being thoroughly convinced that my clients are clothed, by their charter, with the prior and paramount right of making their way, according to their own choice of route, along the valley of the Potomac, without regard to the question of, who are the individual proprietors of the lands through which they wish to pass ?

Sir, I am perfectly satisfied, that the State of Maryland was so far from having intended to create this disgraceful and mutually ruinous collision, that they did not even anticipate it, when they gave their charter to the Baltimore and Ohio Rail Road Company. The structure of the charter, itself, satisfies me of this fact, and the conviction becomes irresistible, when we compare the charter with those proceedings in Baltimore which led to the application for it, and were offered to the Legislature in support of that application. (See Appendix.F.) In these proceedings, the true *termini* of the Rail Road are given, the whole project insists on the superior advantages of the Rail Road to the canal, in this ; that the Rail Road will reach its destination by the shortest and most direct route, while the canal must, necessarily, follow the sinuosities of the stream which is to feed it. It is needless to dwell on this view of the subject, as it is so fully expanded in the answer.

But, be your construction of the charter of the Rail Road Company what it may, the same question, the same prominent, sole, decisive question continually recurs, *which of the two Companies has the prior choice of route?* If we have it, we pray you to dissolve the injunction which interferes with the exercise of this right. If the complainants have it, we pray you, *with equal fervor, to perpetuate the injunction,* and enable us to carry this question of right, *as speedily as possible,* to its ultimate decision.

If the complainants have this prior right, why do they object to the perpetuation of their injunction? If the right be theirs, it must be theirs upon the charters. *They* cannot require these surveys. *We deprecate them,* as producing to us, *a wanton and most ruinous delay.* But the complainants object, both to your *dissolving* the injunction, and *perpetuating* it. What possible motive can they have for this course? Can human charity, or even human credulity, imagine any other but one; to *protract* the litigation; to *obstruct* the Canal Company, as long as possible, in the execution of their work; to annoy and weary them into a surrender of their rights, or an abandonment of the great object committed to their care. Can they hope that the High Court of Chancery of Maryland will lend itself to purposes such as these?

I submit the case, in full reliance that the Court will be rather disposed to hasten this dispute to its end, than to yield to a proposition which can be productive of nothing but delay and oppression to which ever party has the right.



APPENDIX.

A.

EXTRACT FROM AN ACT OF THE STATE OF VIRGINIA.

An act incorporating the Chesapeake and Ohio Canal Company—[Passed January 27, 1824.]

“Whereas a navigable canal from the tide water of the river Potomac, in the District of Columbia, to the mouth of Savage Creek, on the north branch of said river, and extending thence, across the Alleghany mountain, to some convenient point of the navigable waters of the river Ohio, or some one of its tributary streams, to be fed through its course, on the east side of the mountain, by the river Potomac and the streams which empty therein, and on the western side of the mountain, and in passing over the same, by all such streams of water as may be beneficially drawn thereto by feeders, dams, or any other practicable mode, will be a work of great profit and advantage to the people of this State, and of the neighboring States, and may ultimately tend to establish a connected navigation between the eastern and western waters, so as to extend and multiply the means and facilities of internal commerce and personal intercourse between the two great sections of the United States, and to interweave more closely all the mutual interests and affections that are calculated to consolidate and perpetuate the vital principles of Union: and whereas it is represented to this General Assembly, that the Potomac Company are willing and desirous that a charter shall be granted to a new company, upon the terms and conditions hereinafter expressed; and that the charter of the present company shall cease and determine:

“Be it therefore enacted by the General Assembly of Virginia, That, so soon as the Legislatures of Maryland and Pennsylvania, and the Congress of the United States, shall assent to the provisions of this act, and the Potomac Company shall have signified their assent to the same by their corporate act, a copy whereof shall be delivered to the Executives of the several States aforesaid, and to the Secretary of the Treasury of the United States, there shall be appointed by the said Executives and the President of the United States, three commissioners on the part of each State, and the Government of the United States, any one of whom shall be competent to act for his respective Government. The said commissioners shall cause books to be opened at such times and places as they shall think fit, in their respective States, and the District of Columbia, under the management of such persons as they shall appoint, for receiving subscriptions to the capital stock of the Company, hereinafter incorporated; which subscriptions may be made either in person or by power of attorney; and

notice shall be given in such manner as may be deemed advisable, by one or more of the said commissioners, of the time and places of opening the books.

"2. And the said commissioners shall cause the books to be kept open at least forty days. And, within twenty days after the expiration thereof, shall call a general meeting of the subscribers at the city of Washington, of which meeting notice shall be given, by a majority of the commissioners aforesaid, in at least four of the newspapers printed in Pennsylvania, Maryland, Virginia, and the District of Columbia, at least twenty days next before the said meeting; and such meeting shall and may be continued from day to day, until the business is finished; and the commissioners, at the time and place aforesaid, shall lay before such of the subscribers as shall meet according to the said notice, the book containing the state of the said subscriptions; and if one-fourth of the capital sum of six millions of dollars should appear not to have been subscribed, then the said commissioners, or a majority of them, at the said meeting, are empowered to take and receive subscriptions to make up such deficiency, and may continue to take and receive such subscriptions for the term of twelve months thereafter; and a just and true list of all the subscribers, with the sum subscribed by each, shall be made out, and returned by the said commissioners, or by a majority of them, under their hands, to the Board of Public Works of this State, to the Governor and Council of the State of Maryland, to the Secretary of State of the State of Pennsylvania, and to the Secretary of the Treasury of the United States, to be carefully preserved; and in case more than six millions of dollars shall be subscribed, then the sum subscribed shall be reduced to that amount, by the said commissioners, or a majority of them, by beginning at and striking off a share from the largest subscription or subscriptions, and continuing to strike off a share from all subscriptions under the largest, and above one share, until the same is reduced to the capital aforesaid, or until a share is taken from all subscriptions above one share; and lots shall be drawn between subscribers of equal sums, to determine the number of shares which each subscriber shall be allowed to hold, on a list to be made for striking off as aforesaid; and if the sum subscribed still exceed the capital aforesaid, then to strike off, by the same rule, until the sum subscribed is reduced to the capital aforesaid, or all the subscriptions reduced to one share respectively; and, if there still be an excess, then lots shall be drawn to determine the subscribers who are to be excluded, in order to reduce the subscription to the capital aforesaid: which striking off shall be certified on the lists aforesaid; and the said capital stock of the company hereby incorporated, shall consist of six millions of dollars, divided into sixty thousand shares, of one hundred dollars each: of which every person subscribing may take and subscribe for one or more whole shares; and such subscriptions may be paid and discharged either in the legal currency of the United States, or in the certificates of stock of the present Potomac Company, at the par or nominal value thereof, or in the claims of the creditors of the said

company, certified by the acting President and Directors to have been due, for principal and debt, on the day on which the assent of the said company shall have been signified by their corporate act, as hereinbefore required: *Provided*, That the said certificates of stock shall not exceed, in the whole amount, the sum of three hundred and eleven thousand one hundred and eleven dollars and eleven cents; nor the said claims the sum of one hundred and seventy-five thousand eight hundred dollars: *Provided, also*, That the stock so paid for in certificates of the stock of the present company, and of the debts due from the said company, shall be entitled to dividend, only as hereinafter provided: and that no payment shall be received, in such certificate of stock, until the Potomac Company shall have executed the conveyance prescribed by the thirteenth section of this act: *And provided*, That, unless one-fourth of the said capital shall be subscribed, as aforesaid, all subscriptions made in consequence of this act shall be void; and, in case one-fourth, and less than the whole capital, shall be subscribed as aforesaid, then the said commissioners, or a majority of them, are hereby empowered and directed to take and receive the subscriptions, which shall first be offered in whole shares, as aforesaid, until the deficiency shall be made up; a certificate of which additional subscription shall be made, under the hands of said commissioners, or a majority of them, for the time being, and returned as aforesaid.

“ 3. *And be it further enacted*. That, whenever one-fourth, or a greater part of the said stock shall have been subscribed, in the manner aforesaid, then the subscribers, their heirs and assigns, shall be, and are hereby declared to be, incorporated into a company, by the name of the “ Chesapeake and Ohio Canal Company,” and may sue, and be sued, and, as such, shall have perpetual succession, and a common seal; and the estates, rights, and interests, of the said company, shall be adjudged and taken in law to be real estate; and it shall, thereupon, be the duty of the said commissioners, or a majority of them, to call a general meeting of the said subscribers, at such time and place, as they, or a majority of them, shall appoint, after advertising the same in such public prints as they, or a majority of them, may think proper; and such of the said subscribers as shall be present at the said meeting, or a majority of them, are hereby empowered and required to elect a President and six Directors, for conducting the said undertaking, and managing all the said company's business and concerns, for and during such time, not exceeding three years, as the said subscribers, or a majority of them, shall think fit; and, in counting the votes of all general meetings of the said company, each member shall be allowed one vote for every share, as far as ten shares, and one vote for every five shares above ten, by him or her held at the time, in the stock of the said company; and any proprietor, by writing, under his or her hand, executed before two witnesses, may depute any other member or proprietor to vote and act as proxy for him or her, at any general meeting: *Provided, also*, That no officer or director of said company shall, under any circumstances, be allowed to vote on any stock but his own.

"4. *And be it further enacted*, That the said President and Directors, and their successors, or a majority of them, assembled, shall have full power and authority to appoint, and, at their pleasure, dismiss, such engineer or engineers, and agent or agents, as they may deem expedient, and to fix their compensation; and to agree with any person or persons, on behalf of the said company, to cut canals, erect dams, open feeders, construct locks, and perform such other works, as they shall judge necessary or expedient for completing the canal hereinbefore mentioned and described; and, out of the money arising from the subscriptions and tolls, and other aids, hereinafter given, to pay for the same, and to repair and keep in order the said canals, locks, and other works necessary thereto, and to defray all incidental charges; and also to appoint a treasurer, clerk, and other officers, toll-gatherers, managers, and servants, as they shall judge requisite, and to agree for, and settle, their respective wages or allowances; and to settle, pass, and sign their accounts; and also to make and establish rules of proceeding, and to transact all other business and concerns of the said company, in and during the intervals between the general meetings of the same; and they shall be allowed, as a compensation for their trouble therein, such sum of money as shall, by a general meeting of the stockholders, be determined: *Provided, always*, That the treasurer shall give bond, in such penalty, and with such security, as the said President and Directors, or a majority of them, shall direct, for the true and faithful discharge of the trust reposed in him; and that the allowance to be made him for his services shall not exceed three dollars in the hundred for the disbursements by him made; and that no officer in the company shall have any vote in the settlement or passing of his own account.

"5. *And be it further enacted*, That, on all subscriptions which shall not be paid, as hereinbefore provided, in the certificates of the stock, or debts of the present Potomac Company, there shall be paid, at the time of subscription, on each share, one dollar; and thereafter, when the company shall be formed, the stock subscribed shall be paid in such instalments, and at such times, as the President and Directors shall, from time to time, require, as the work advances: *Provided*, That not more than one-third part shall be demanded within any year from the commencement of the work; nor any payment demanded, until at least sixty days' public notice thereof shall have been given, in such public newspapers as the said President and Directors shall direct such notices to be published in: and, whenever any subscriber shall fail to pay any instalment, called for by the company, it shall and may be lawful for the company, upon motion to be made in any court of record, after ten days' notice, to obtain judgment against the subscriber so failing to pay; or the said company, at their option, may, after giving sixty days' notice, in such public newspaper, printed within the District of Columbia, as they may judge proper, sell the stock of such subscriber; and, if the proceeds of any such sale shall exceed the sum demanded, the surplus, after paying the expenses of such sale, shall be paid to the subscriber so failing, or to his legal

representatives ; and the purchaser, at such sale, shall become a stockholder, and be subject to the same rules and regulations, and entitled to the same privileges, rights, and emoluments, as original subscribers under this act."

"9. *And be it enacted*, That, for and in consideration of the expenses the said stockholders will be at, not only in cutting the said canal, erecting locks and dams, providing aqueducts, feeders, and other works, and in improving and keeping the same in repair, the said canal and all other works aforesaid, or required to improve the navigation thereof, at any time hereafter, with all their profits, subject to the limitations herein provided, and to none other, shall be, and the same are hereby, vested in the said stockholders, their heirs and assigns, forever, as tenants in common, in proportion to their respective shares, and be forever exempt from the payment of any tax, imposition, or assessment, whatsoever ; and that it shall and may be lawful for the said president and directors, at all times, forever hereafter, to demand and receive, at such places as shall hereafter be appointed by the president and directors aforesaid, tolls for the passage of vessels, boats, rafts, produce, and all other articles, at such rates as the said president and directors may hereafter allow and establish, according to the provisions of this act.

"10. *And be it enacted*, That, if the Commissioners hereby required to be appointed, shall die, resign, or refuse to act, the vacancy occasioned thereby shall be filled by the same authority by which the original appointment was made ; and the person or persons appointed to fill such vacancy shall have all the power and authority which was vested in the commissioner whose place he or they shall be appointed to supply ; and, when any part of the canal aforesaid shall have been completed, according to the true intent and meaning of this act, the president and directors of the company hereby created shall have power, and it shall be their duty, to ordain and establish a rate of tolls to be paid upon boats, vessels, rafts, or other property, passing on the part of the canal so completed, and so, from time to time, as part or parts shall be completed, and until the eastern section thereof shall be finished up to the mouth of Savage river or creek, and, thereafter, until the entire canal shall have been finished according to the true intent and meaning of this act. For the collection of which tolls, the president and directors shall have power to establish so many toll houses, and, at their pleasure, to appoint and remove so many collectors, and at such places, as, from time to time, they may judge expedient ; and the said president and directors shall have full authority, subject to the direction and control of a majority in interest of the stockholders represented in any general meeting, to regulate and fix a tariff of tolls, not exceeding an average of two cents per ton per mile ; and so to adjust the said tolls in relation to the capacity or burthen of the boats, and the dimensions of the rafts passing the locks of the said canal, as to promote economy of water and time in the navigation thereof.

" 11. *And be it enacted,* That the president and directors shall annually, or semi-annually, declare and make such dividend of the nett profits, from the tolls to be received, according to the provisions of this act, and from the other resources of the company, as they may deem advisable, after deducting therefrom the necessary current, and the probable contingent expenses, to be divided among the proprietors of the stock of the said company, in proportion to their respective shares, in manner following, that is to say : if such nett profits shall not exceed ten per cent. on the amount of shares, which shall have been paid for in current money of the United States, and expended on the eastern section of the said canal, then the whole thereof shall be divided among the holders of such shares, in proportion to their respective shares; but if such nett profits shall exceed the rate of ten per cent. per annum, in any year, on such amount of stock, then the surplus shall be divided among such stockholders as shall have paid for their shares in certificates of the debts of the Potomac Company, until they shall therefrom have received a dividend of six per cent. : and, if a surplus yet remain, the same shall be divided among the stockholders who shall have paid for their shares in certificates of the stock of the Potomac Company, until they shall have received therefrom a dividend of six per cent. per annum on such shares : and, if a surplus still remain, so long as the western section of the canal shall remain unfinished, such surplus shall be applied, from time to time, to the construction and completion thereof, in such mode as the president and directors, under such rules and regulations, not inconsistent with the Constitution of the United States, or of the several States aforesaid, as the stockholders, or a majority thereof, in general meeting, may prescribe, until the western section of the canal shall be also completed ; after which, if such surplus shall still arise, the same shall be divided among all the stockholders, without discrimination, in proportion to their respective shares, until the annual dividend thereon shall have reached 15 per cent.; beyond which it shall never extend. But, should the nett revenue of the company exceed that amount for any two years in succession, then such excess shall be applied, by the president and directors, in such mode as shall be agreed on by a majority of the stockholders convened in general meeting : first, to strengthening and improving the works of the canal of every description requiring the same ; next, to the accommodation, where not already provided, of the inhabitants of the shores of the river Potomac, and of the country drained by the tributary streams thereof, now navigable, or which may hereafter become so, by affording to them, in the best practicable mode, a safe and easy access to the canal, from the surface of the main river, and of the said streams emptying therein ; and, last of all, to the erection of such walls, of stone or other materials, along the water margin of the canal, as shall fit the same for the navigation of steam boats of a size adapted to the said canal. And should the said tolls continue, after all such improvements have been completed, to nett more than fifteen per cent. per annum to the stockholders, for any two years in succession, the tolls upon the same shall be

reduced by the president and directors, according to some just and equitable ratio, till the said dividend shall fall to fifteen per cent. per annum : *Provided*, That, should the said dividend thereafter sink below fifteen per cent. the said tolls, or a part thereof, may be renewed, till the said nett dividend reaches that amount. And for any, or all the within mentioned purposes, the said president and directors are empowered to borrow, in behalf of the company, on the credit of such excess of tolls, such sum or sums of money, as they may deem expedient, at such rate of interest, and with such delay of payment, as they may stipulate, with the previous consent of a majority of the stockholders, in general meeting convened.

“12. *And be it further enacted*, That it shall be the duty of the President and Directors of the Chesapeake and Ohio Canal Company, so long as there shall be and remain any creditor of the Potomac Company, who shall not have vested his demand against the same in the stock of the Chesapeake and Ohio Canal Company, to pay to such creditor or creditors, annually, such dividend, or proportion of the nett amount of the revenues of the Potomac Company, on an average of the last five years preceding the organization of the said proposed company, as the demand of the said creditor or creditors at this time, may bear to the whole debt of one hundred and seventy-five thousand eight hundred dollars.

“13. *And be it further enacted*, That whenever the Potomac Company shall have declared its assent to the provisions of this act, in the manner hereinbefore provided, it shall be lawful for the said company to surrender its charter, and convey, in due form of law, to the Chesapeake and Ohio Canal Company, hereby incorporated, all the property, rights, and privileges, by them owned, possessed, and enjoyed, under the same ; and thereupon it shall be lawful to and for the said company, hereby proposed to be created, to accept such surrender and transfer, and to hold, possess, use, and occupy, all the said property, rights, and privileges, in the same manner, and to the same effect, as the said Potomac Company now hold, possess, and occupy the same by law ; and thereupon the charter of the said Potomac Company shall be, and the same is hereby, vacated and annulled, and all the rights and powers thereby granted to the Potomac Company, shall be vested in the company hereby incorporated ; and it shall be the duty of the said last mentioned company, until every section of the contemplated canal shall be completed, so as to be used and enjoyed for the purposes of navigation, to keep the corresponding part of the river in a proper state for navigation, and in good order as the same now is ; and, in default thereof, they shall be in all things responsible, in the same manner as the Potomac Company is now responsible. And in all rivulets, streams, creeks, and rivers, required for the western section of the said Chesapeake and Ohio Canal, the same rights shall be, and are hereby, vested in the Chesapeake and Ohio Canal Company, by this act, as the charter of the Potomac Company vested in the said company, in relation to the waters of the Potomac, and the tributary streams thereof.

" 14. *And be it enacted*, That the said canal, and the works to be erected thereon in virtue of this act, when completed, shall forever thereafter be esteemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities, and produce, whatever, on payment of the tolls to be imposed, as provided by this act; and no other toll or tax whatever, for the use of the said canal and the works thereon erected, shall, at any time hereafter, be imposed, but by consent of the said States, and of the United States.

" 15. And whereas, it is necessary for the making of the said canal, locks, dams, ponds, feeders, and other works, that a provision should be made, for condemning a quantity of land for the purpose: *Be it enacted*, That it shall and may be lawful for the said president and directors, or a majority of them, to agree with the owners of any land, through which the said canal is intended to pass, for the purchase, or use and occupation thereof; and, in case of disagreement, or in case the owner thereof shall be a femme covert, under age, non compos, or out of the State or county, on application to a justice of the county in which such land shall be, the said justice of the peace shall issue his warrant, under his hand, to the sheriff of the county, to summon a jury of eighteen inhabitants of his county, not related to the parties, nor in any manner interested, to meet on the land to be valued, at a day to be expressed in the warrant, not less than ten, nor more than twenty days thereafter; and the sheriff, upon receiving the said warrant, shall forthwith summon the said jury," &c. &c.

" 16. *And be it enacted*, That it shall be the duty of the company hereby incorporated, to cut, make, and construct the said canal, with good and sufficient locks, on the most improved plan for expedition in the use thereof, and with a width of not less than forty feet at the surface of the water therein, or of twenty-eight feet at the bottom thereof, unless the quality of the soil shall require a narrow base to admit of a sufficient slope to preserve the banks from sliding down, and sufficient to admit, at all seasons, the navigation of boats and rafts, with a depth of four feet water at the least; and wherever wastes shall be essential to the security of the said canal, and in no other situation whatever, along the same, the waste water of the said canal may be, from time to time, sold or disposed of by the said company, for the purpose of supplying such works and machinery as require a water power. And along one side at least of the said canal, and such aqueducts as it may render necessary, there shall be provided throughout its whole extent, a towing path of sufficient breadth to apply the power of horses to the navigation thereof."

" 19. *And be it enacted*, That, whenever it shall become necessary to subject the lands of any individual to the purposes provided for in this act, and their consent cannot be obtained, it shall and may be lawful for the company to enter upon such lands, and proceed to the execution of such works, as may be requisite; and that the pendency of any proceedings in any suit in the nature of a writ of ad quod damnum, or any other proceedings, shall not hinder or delay the progress of the work; and it shall be the duty of every court to give prece-

dence to controversies which may arise between the company created by this act, and the proprietors of land sought to be condemned for public uses, and to determine them in preference to all other causes.

20. *And be it enacted*, That the said canal shall be, and the same is hereby, divided into two sections, to be denominated first and second, or eastern and western, respectively; that the first, or eastern section, shall begin at the District of Columbia, on tide water, and terminate at or near the bank of Savage river, or creek, which empties into the north branch of the Potomac, at the base of the Alleghany mountain; that the second, or western section, shall commence at the said termination, and extend along the valley of Savage river, or creek, so far as the same, or any branch thereof as may reach some convenient point thereon, for connecting the eastern and western waters, by a tunnel through, or an open cut across, the dividing ridge between the same; and thence, after crossing the said dividing ridge, shall proceed to the highest steamboat navigation of the Ohio river, or of some one tributary stream thereof, in such direction as, in the opinion of the said President and Directors, shall be best calculated for the attainment of the end set forth in the preamble of this act: that the said President and Directors shall first construct the eastern section aforesaid, out of the capital stock hereinbefore mentioned, and shall next proceed to construct, with all possible despatch, the western section thereof. In case the said company shall not begin the said work within two years after the company shall have been formed, or if the work, having been so begun, shall not be diligently prosecuted, so that one hundred miles of the said canal, with the adequate locks and incidental improvements, shall not be completed, and in fit order for navigation, in the term of five years from the commencement of the work, then all interest of the said company in the navigation and tolls shall cease and determine, and their charter shall be thereafter taken to be null and void; and so, in like manner, shall the said charter be null and void, if the entire eastern section be not completed in the term of twelve years from the said commencement. And should the said company fail to begin the western section of the said canal in two years after the time allowed as aforesaid for the completion of the eastern section; or, having begun the western section, shall fail to complete the same in six years after such beginning, then all right, title, and interest, of the said company, in the said western section, shall cease and determine; and the several States aforesaid shall have full authority to incorporate another company for the completion of such section, or to complete the same in any other mode that they may deem expedient. And if, after the completion of the said canal and locks, the President and Directors shall fail to keep the same in repair for twelve months at any time, then, in like manner, the interest of the company in the navigation and tolls shall cease, and their charter shall be forfeited.

21. *And be it further enacted*, That the right to the waters of the river Potomac, for the purpose of any lateral canal or canals, which the State of Virginia or Maryland may authorize to be made in con-

nexion with the said canal, is reserved to the said States respectively; that a similar right is reserved to the State of Pennsylvania, in relation to the rivers and streams within the territory of that State, the waters of which may be used in supplying the western section of the said canal; that the Government of the United States shall retain the power to extend the said canal in or through the District of Columbia, on either or both sides of the river Potomac: *Provided*, That, before this act shall take effect, the Congress of the United States shall authorize the States of Virginia and Maryland, or either of them, to take and continue a canal from any point of the above named canal, or the termination thereof, through the territory of the District of Columbia, or any part thereof, to the territory of the said States, or either of them, in any direction they may deem proper, upon the same terms and conditions, and with all the rights, privileges, and powers of every kind whatsoever, that the company incorporated by this act have to make the Chesapeake and Ohio Canal: *And, provided also*, That, in taking or extending such lateral canal or canals through the District of Columbia, by either of the said States, no impediment or injury be done to the navigation of the said Chesapeake and Ohio Canal.

22. This act, or so much thereof as respects the canal and works designed to be constructed in the District of Columbia, and the States of Virginia and Maryland, shall take effect, with such necessary modification in the construction thereof, as shall fit it for such limited application or use, upon the assent of the Congress of the United States, and the Legislature of Maryland being given thereto; and upon its receiving the further assent of the Legislature of Pennsylvania, the whole and every section and part thereof shall be valid and in full force and operation.

23. *Be it further enacted*, That the assent of the Congress of the United States, required by the first section of this act, and the authority conferred by the fourteenth section, is understood and taken to relate only to their authority as the legislature of the District of Columbia.

24. *Be it further enacted*, That all acts, and parts of acts, coming within the purview of this act, shall be, and the same are hereby, repealed.

ACT OF THE STATE OF MARYLAND.

An act to confirm An act of the General Assembly of the State of Virginia, entitled "An act incorporating the Chesapeake and Ohio Canal Company." [Passed December session, 1824.]

Whereas the General Assembly of Virginia have heretofore, at the December session of the said General Assembly, in the year eigh-

teen hundred and twenty-three, passed an act, entitled "An act incorporating the Chesapeake and Ohio Canal Company," in the substance or words following :

[See the preceding Act.]

Therefore, be it enacted by the General Assembly of Maryland, That the said act of the General Assembly of Virginia be, and the same is hereby, accepted, assented to, and confirmed.

And be it further enacted and declared, That, by confirming and accepting the act of Virginia, it is not intended by the Legislature of Maryland to deny to the Congress of the United States the constitutional power to legislate on the subjects of roads and canals. And for the purpose of removing all doubt as to the right of the State of Maryland to intersect the said Chesapeake and Ohio Canal, for the purpose of conducting a lateral canal or canals to Baltimore, or elsewhere in the State of Maryland, from that part of the said Chesapeake and Ohio Canal which shall be within the District of Columbia—

Be it further enacted and declared, That the said act of Virginia has been accepted and confirmed by the Legislature of Maryland, on the express condition that the act of Congress contemplated by the twenty-first section of the Virginia act, shall direct and provide some safe and practicable mode whereby such lateral canal or canals may be secured to the State of Maryland, and whereby, also, it may be determined whether such lateral canal or canals will injure the said Chesapeake and Ohio Canal, within the meaning and intention of the said twenty-first section of the Virginia act.

ACT OF THE CONGRESS OF THE UNITED STATES.

An act confirming an Act of the Legislature of Virginia, entitled "An act incorporating the Chesapeake and Ohio Canal Company," and an act of the State of Maryland, confirming the same —[Approved March 3, 1825.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of the Legislature of the State of Virginia, entitled "An act incorporating the Chesapeake and Ohio Canal Company," be, and the same is hereby, ratified and confirmed, so far as may be necessary for the purpose of enabling any company that may hereafter be formed by the authority of said act of incorporation, to carry into effect the provisions thereof, in the District of Columbia, within the exclusive jurisdiction of the United States, and no further.

SEC. 2. *And be it further enacted,* That should the State of Virginia or Maryland desire, at any time, to avail itself of the right secured to it by the twenty-first section of the act aforesaid, to take

and continue a canal from any point of the Chesapeake and Ohio Canal, to any other point within the territory of the District of Columbia, or through the same, on application to the President of the United States, by the Executive of the State, the President is authorized and empowered to depute three skilful commissioners of the United States' Corps of Engineers, to survey and examine so much of the route of such canal as may effect, in any manner, the navigation of the Chesapeake and Ohio Canal. The said commissioners, or a majority of them, shall ascertain, as far as practicable, whether the canal proposed to be constructed by the State aforesaid, will injure or impede the navigation of the Chesapeake and Ohio Canal, and report to the President of the United States the facts and reasons on which they may ground their judgment thereupon; which report shall be submitted to the Congress of the United States at their session next ensuing the date thereof, for their decision thereon; and if Congress shall be of opinion that the said canal may be cut in the manner proposed as aforesaid, without impeding or injuring the navigation of the Chesapeake and Ohio Canal, the same shall be conclusive thereon.

ACT OF THE STATE OF MARYLAND.

An act for the promotion of Internal Improvement.—[Passed March 6, 1826.]

SEC. 1. *Be it enacted by the General Assembly of Maryland, That,* so soon as the Board of Public Works of this State shall, by actual survey, have ascertained, and reported to the Governor and Council, the practicability of excavating a canal, as hereinafter described, from some convenient point on the Potomac river intersecting or continuing the Chesapeake and Ohio Canal to the city of Baltimore, there shall be appointed, by the Governor and Council, three commissioners, who shall cause books to be opened, at such times and places as may be determined on by the Board of Public Works, for the purpose of receiving subscriptions to the capital stock of the company hereinafter incorporated; which subscriptions may be made either in person or by power of attorney, notice having been previously given, in such manner as the said Board of Public Works may deem expedient, of the times and places of opening the said books.

4. *And be it enacted, That* the said President and Directors, and their successors, or a majority of them assembled, shall have full power and authority to appoint, and at their pleasure dismiss, such engineer or engineers, and agent or agents, as they may deem expedient, and to fix their compensation, and to agree with any person or persons on behalf of the said company, to cut canals, erect dams, open feeders, construct locks, and perform such other works as they shall judge necessary and expedient, for completing a canal from the

termination or other point on the Chesapeake and Ohio Canal, to be determined, as aforesaid, by the Board of Public Works, to the city of Baltimore; &c.

17. *And be it enacted*, That, whenever it shall become necessary to subject the lands of any individuals to the purposes provided for in this act, and their consent cannot be obtained, it shall and may be lawful for the Company to enter upon such land, and proceed to the execution of such works as may be requisite; and that the pendency of any proceedings in any suit in the nature of a writ of *ad quod damnum*, or any other proceedings, shall not hinder or delay the progress of the work, and it shall be the duty of every Court to give precedence to controversies which may arise between the Company created by this act, and the proprietors of land sought to be condemned for public uses, and to determine them in preference to all other causes.

SEC. 19. *And be it enacted*, That the Treasurer of the Western Shore be, and he is hereby, authorized and required, for and on behalf of the State, to subscribe to the Chesapeake and Ohio Canal Company for stock to the whole amount of the stock of the Potomac Company owned by the State, and of the debt due to the State by the said Potomac Company, and to pay for the same in the certificates of the stock of the Potomac Company, and in the evidences of the debt due to the State, certified in the manner specified in the charter of the said Chesapeake and Ohio Canal Company; and also to subscribe for five thousand shares of the stock of the said company, payable, agreeably to the terms of the charter, in the legal currency of the United States.

SEC. 20. *And be it enacted*, That the Treasurer of the Western Shore be, and he is hereby, instructed and required, in like manner, to subscribe for five thousand shares in the Maryland Canal Company hereby incorporated.

SEC. 21. *And be it enacted*, That the sum of two hundred thousand dollars shall be, and the same is hereby, appropriated, or such part thereof as may be necessary to drain, embank, and render dry and arable, the low lands on the margins of such rivers and creeks of the Eastern Shore of this State, as the Board of Public Works may think proper and recommend, and to complete and carry into effect such plans for opening and improving the navigation of the Pocomoke, Manokin, Wycomico, Great Choptank, Chester, Elk, and North East Rivers, as the Board of Public Works may devise, recommend, and contract for on behalf of the State of Maryland: *Provided*, That, before any part of the aforesaid subscriptions, except so much as is payable in the stock and debt of the Potomac Company, shall be made, or any part of the sum herein appropriated to execute the improvements contemplated by this act to be made, on the low lands situated on the margins of the aforesaid rivers and creeks, or to execute the improvements of the Pocomoke, Manokin, Wycomico, Great Choptank, Chester, Elk, and North East Rivers, be expended, the Congress of the United States shall, by law, authorize

a subscription for not less than ten thousand shares of the capital stock of the Eastern section of the Chesapeake and Ohio Canal, and shall enact a law expressly securing to the State of Maryland, and to any company incorporated, or hereafter to be incorporated by the said State, the right to take and continue a canal from any point of the Chesapeake and Ohio Canal through the Territory of Columbia, or any part thereof, to the said State, in any direction it may deem proper, upon the same terms and conditions, and with all the rights, privileges, and powers, of every kind whatsoever, granted to the Chesapeake and Ohio Canal Company by the act of incorporation, and deciding agreeably to the act of Congress passed at December session, eighteen hundred and twenty-four, that the canal, as located by the Board of Public Works under the authority of this act, may be cut without impeding or injuring the navigation of the Chesapeake and Ohio Canal. *And, provided also*, That the Board of Public Works shall previously ascertain and certify to the Executive the practicability of connecting, by the canal described in this act, the Chesapeake and Ohio Canal, with the Patapsco River at the city of Baltimore; and if the said Board of Public Works shall adopt for the said canal a line wholly within the State of Maryland, then the act of Congress last mentioned in the foregoing proviso, shall not be necessary to authorize the subscriptions and expenditure aforesaid: *And provided, also*, That the Executive shall previously be satisfied that the residue of the sum of money estimated by the United States' Board of Engineers to be adequate to the completion of the Eastern section of the Chesapeake and Ohio Canal, after deducting the amount of the subscriptions of the State of Maryland and of the United States, herein provided to be made, hath been actually subscribed by bona fide and competent subscribers.

22. *And be it enacted*, That if, at any time hereafter, a Company shall be formed for the purpose of making a canal from the city of Baltimore to York Haven, on the river Susquehannah, of the dimensions contemplated in the report of the Commissioners to survey the practicability and probable expense of a canal from the river Susquehannah to the city of Baltimore, the faith of the State is hereby pledged to grant a charter to such Company, with all and singular the rights, privileges, and advantages, as are granted to the Company created by this act, to extend the Canal from the Potomac to the city of Baltimore, called the Maryland Canal; and the faith of the State is also hereby pledged to subscribe for stock in said Company to the amount of five hundred thousand dollars: *Provided*, That such subscription shall not be made until the Executive of this State, for the time being, shall be satisfied, that, with the amount so to be subscribed on the part of the State, the whole sum necessary to the completion of the said canal hath been actually subscribed by bona fide and competent subscribers.

23. *And be it enacted*, That the Treasurer of the Western Shore, under the direction of the Executive, shall be, and he is hereby, authorized and directed to negotiate for, and raise by loan, as they may

become payable for canal stock, or other improvements hereinbefore contemplated under the provisions of this act, the required sum or sums of money, at a rate of interest not exceeding five per centum per annum, payable quarter yearly; the whole of said loans to be redeemable at the pleasure of the State, at any time after the first day of January, in the year of our Lord eighteen hundred and sixty.

24. *And be it enacted*, That the dividends and other emoluments which may, from time to time, accrue to the State from the various investments hereby authorized, and from the road stock now belonging to the State, shall be, and the same are hereby, pledged and set apart as a sinking fund, under the management of the Board of Public Works, in the first place to pay and discharge the public debt incurred by the subscriptions hereinbefore authorized.

ACT OF THE STATE OF MARYLAND.

A supplement to the act, entitled "An act for the promotion of Internal Improvement."—[Passed March 10, 1827.]

Whereas, by the act, entitled "An act for the promotion of Internal Improvement, passed at December session, eighteen hundred and twenty-five, it is, amongst other things, provided, that a part of the subscriptions thereby authorized to the stock of the Chesapeake and Ohio Canal Company shall depend upon the subscription, by the Congress of the United States, of not less than ten thousand shares of said capital stock to the Eastern section of the said Chesapeake and Ohio Canal: And whereas, according to the provisions of the charter creating said company, subscriptions are required to be made without a reference to sections, Eastern or Western:

1. *Be it enacted by the General Assembly of Maryland*, That said proviso, in said act contained, be, and the same is hereby, repealed; and that the Treasurer of the Western Shore be, and he is hereby, authorized and required, for and on behalf of the State, to make the subscription provided for by the act aforesaid, whenever the Congress of the United States shall have authorized subscription for not less than ten thousand shares of the capital stock of the Chesapeake and Ohio Canal Company, and shall have complied with the other requirements of the original act aforesaid, to which this is a supplement.

2. *And be it enacted*, That the proviso in the twenty-first section of said original act contained, requiring that the Executive shall, previously, be satisfied that the residue of the sum of money estimated by the United States' Board of Engineers to be adequate to the completion of the Eastern section of the Chesapeake and Ohio Canal, after deducting the amount of the subscriptions of the State of Maryland, and of the United States, herein provided to be made, hath actually subscribed by *bona fide* and competent subscribers, be, and the same is hereby, repealed.

3. *And* whereas, by the act to which this is a supplement, it is also declared that a charter would be granted by this State for the making of a canal from the river Susquehannah to the city of Baltimore, as therein mentioned, and, by a subsequent act of the last session, entitled “An act to incorporate the Susquehannah and Patapsco Canal Company,” authorizing such canal to commence at York Haven, it is provided, that this State should subscribe for stock of the said company, and appropriate the sum of five hundred thousand dollars to the making said canal; and it having been thought proper to authorize the commencement of a similar canal, in connexion with the Pennsylvania canal, at or near Swetara creek, on the Susquehannah river, and to be made as provided by the act passed at the present session, entitled “An act to incorporate the Pennsylvania and Maryland Canal Company,” and to transfer to the same the appropriation aforesaid: Therefore, *Be it enacted*, That, so soon as the Governor and Council shall be satisfied that eight thousand shares of the stock of the company authorized by the said last mentioned act, shall have been subscribed by *bona fide* and competent subscribers, and shall certify the same to the Treasurer of the Western Shore, then the said Treasurer shall be, and he is hereby, authorized and required to subscribe, on behalf of this State, for five thousand shares of the stock of the said Pennsylvania and Maryland Canal Company.

4. *And be it enacted*, That so much of the act to which this is a supplement, and the act to incorporate the Susquehannah and Patapsco Canal Company, as shall be found inconsistent with the provisions of the act passed at the present session, entitled “An act to incorporate the Pennsylvania and Maryland Canal Company,” be, and the same are hereby, repealed.

ACT OF THE STATE OF MARYLAND.

A further supplement to the act, entitled “An act for the Promotion of Internal Improvement.”—[Passed December Session, 1827.]

Whereas, by the act, entitled “A supplement to the act, entitled ‘An act for the promotion of Internal Improvement,’ passed at December session, eighteen hundred and twenty-six, chapter two hundred and eleven, it is, amongst other things, provided that one of the conditions upon which the Treasurer of the Western Shore shall be authorized to subscribe for five thousand shares in the capital stock of the Chesapeake and Ohio Canal Company, is, that whenever the United States shall have authorized subscriptions for not less than ten thousand shares of the capital stock of the Chesapeake and Ohio Canal Company; and whereas it is important, with reference to the interest of the State, that the grant already made by her, to that company, should be made dependent upon such other conditions and restrictions, as will effectually secure the

completion of this work, if ever commenced, and the previous payment of the instalments upon all other subscriptions; and that some mode of payment of the subscription already made, should be provided, having reference to the exhausted condition of the Treasury, in lieu of the mode of payment provided by the terms of the original subscription: Therefore,

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That the Treasurer of the Western Shore be authorized to subscribe the aforementioned five thousand shares of the capital stock of the Chesapeake and Ohio Canal Company, whenever the commissioners, their successors, or a majority of them, appointed on the part of this State, to aid in opening books, and taking subscriptions to the stock of said company, shall certify that the sum of two millions five hundred thousand dollars has been subscribed by bona fide subscribers, with such additional securities, as to them may be deemed ample, to ensure the faithful compliance on the part of the subscribers of the aforesaid two millions five hundred thousand dollars: and provided, also, that the instalments thereon, similar to that required to be paid on behalf of the State, and all the previous instalments, which may have accrued thereon, shall have been paid, before any payment shall be demanded on account of the State's subscription.

SEC. 2. *And be it enacted,* That the said subscription is authorized and directed upon the condition, that the said President and Directors of the said Chesapeake and Ohio Canal Company shall certify to the said Treasurer, their agreement, under the corporate seal of said company, to accept and receive, in payment of the instalments which may become due on any such subscription, as they may be called for, certificates of stock of the State of Maryland, at par, irredeemable for fifteen years, and bearing an interest of five *per centum per annum*, payable quarterly, to commence at the end of one year after the same shall have been issued in succession; and that, upon any such subscription being made, the said Treasurer is further authorized and directed to borrow, on the credit of the State, on the best obtainable terms, from time to time, the funds necessary to meet and discharge the first advance, and each successive payment, whensoever and as often as any instalment on the said subscription of the State shall be demanded, and become due, in conformity to the provisions of the charter of the said company; and to issue for the same, certificates of stock of the State, bearing interest at the rate of five *per centum per annum*, payable quarterly; provided, that the said stock shall be redeemable at the pleasure of the State, at any time after fifty years from each successive issue of certificates as aforesaid; and the premium, if any, on each and every of the said loans, shall be invested in some safe and productive stock, at the discretion of the said Treasurer, with the advice and consent of the Governor and Council, for the time being; and the interests, dividends, or profits, arising from such investment or investments, shall be re-invested as aforesaid, for the eventual redemption of the said loans: and the said funds, when obtained under the authority of this act, the said Treasurer is hereby

directed to pay to the order of the President and Directors of the Chesapeake and Ohio Canal Company, in conformity to the provisions of the charter of the said company, and to receive therefor the necessary acquittances; or, in case it shall be deemed more beneficial to the interest of the State, in the estimation of the said Treasurer, with the approbation and concurrence of the Governor and Council, the said Treasurer shall be, and he hereby is, authorized and directed, whensoever and as often as any instalment on the said subscription of the State shall be demanded, and become due, in conformity to the provisions of the said charter, to issue certificates of stock of the State, at par, irredeemable for fifteen years, bearing interest at the rate of five per centum per annum; the said interest upon such certificates to commence at the end of one year after the same shall have been issued, in succession, and to be paid quarterly thereafter; and the said Treasurer is authorized and directed to cause the said certificates to be delivered to the person or persons authorized to receive the said instalments, as they shall severally become due, and to demand and receive, from such person or persons, upon the delivery of the said certificates, a full acquittance and discharge for and on behalf of the State, for the instalment for which the said certificates were issued: provided, always, that, in case a premium of five per centum, or exceeding five per centum, may be obtained upon any loan required for any instalment as aforesaid, that then, and in that case, it shall be the duty of the said Treasurer, with the advice and consent of the Governor and Council, as aforesaid, to elect the first alternative, as hereinbefore provided: *And provided furthermore, and it is hereby enacted*, That, upon the adoption of either alternative, a capital equal to ten per centum, at the least, on the gross amount of each loan, shall be made from any unappropriated money in the Treasury, and the same shall be invested in some safe and productive stock, as aforesaid; and the interest, dividends, or profits, arising therefrom, shall be invested, as aforesaid, for the eventual redemption of each of the said loans, to be negotiated as aforesaid.

SEC. 3. *And be it enacted*, That any act or acts, repugnant to, or inconsistent herewith, be, and the same are hereby, repealed.

At a General Meeting of the Stockholders of the Chesapeake and Ohio Canal Company, holden by adjournment, on Monday, 23d June, 1828, it was

Resolved, That the Chesapeake and Ohio Canal Company do accept, ratify, and confirm the subscription, by the State of Maryland, of half a million of dollars to the stock of the company, according to the terms of the several acts of the State of Maryland relating thereto, and especially the act of the said State, entitled "An act supplemental to an act, entitled 'An act for the promotion of internal improvement,'" which passed at the December session of the Legislature of

that State, of 1827; and that the President and Directors of the company be authorized and instructed to signify this acceptance and ratification, in the mode prescribed by the said act or acts, as soon as practicable.

ACT OF THE STATE OF MARYLAND.

An act to amend the "Act incorporating the Chesapeake and Ohio Canal Company."—[Passed December Session, 1826.]

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That the act, entitled "An act incorporating the Chesapeake and Ohio Canal Company," passed by the General Assembly of Virginia, at the December session, eighteen hundred and twenty-three, which has already received the assent of the State of Maryland, and of the Congress of the United States, as well as of the Potomac Company, shall be, and the same is hereby, amended, in the manner hereinafter provided, on condition that this act receive, in like manner, the assent of the necessary parties thereto.

SEC. 2. *And be it further enacted,* That the Chesapeake and Ohio Canal Company shall have power to terminate the eastern section of the said canal, at or near the town of Cumberland, on the river Potomac, and thence, to extend the western section thereof, in any direction that may be deemed expedient, by any other route, as well as that prescribed in the act aforesaid, towards Pittsburg, on the river Ohio; and, in extending the same in any direction across the dividing ridge which separates the eastern and western waters, to substitute, for a tunnel and numerous locks on such part of the route, inclined planes and railways, or any other artificial communication or roads; and, in the event that the western section of the Chesapeake and Ohio Canal shall leave the valley of the Potomac river at any point below the Coal Banks, at or near the mouth of Savage, on the North Branch thereof, the company shall have the power, in like manner, to extend a branch from the main canal, to the said Coal Banks, at or above the mouth of Savage, and to cause such branch to be constructed, of such dimensions as their views of their own and the public interest may warrant; and, for the construction of the same, shall have and enjoy the same rights, privileges, and immunities, under the same restraints and conditions, in all respects, as they are entitled to in relation to the main Chesapeake and Ohio Canal.

SEC. 3. *And be it further enacted,* That nothing in this act contained shall be held to discharge the said Company from a compliance with each and every of the conditions of the original act, except so far as the same are expressly altered by the provisions of this act.

SEC. 4. *And be it further enacted,* That this act shall commence and be in force as soon as it shall have received the assent of the Legislature of Virginia, of the Congress of the United States, and of the Potomac Company.

ACT OF THE STATE OF VIRGINIA.

An act giving the assent of this State to an act to amend the act incorporating the Chesapeake and Ohio Canal Company, as passed by the State of Maryland.—[Passed February 26th, 1827.]

Whereas it is represented that the General Assembly of the Commonwealth of Maryland hath passed, at their present session, an act, entitled "An act to amend the act incorporating the Chesapeake and Ohio Canal Company," in the words following, to wit :

[See preceding act.]

1. *Be it therefore enacted by the General Assembly of this Commonwealth,* That the assent of this Legislature, in and to the amendment to "the act incorporating the Chesapeake and Ohio Canal," as contained in the foregoing act of the General Assembly of Maryland, is hereby as fully and completely given, as if the said amendatory act had been passed by this present General Assembly.

2. This act shall be in force from the passing thereof.

 ACT OF THE STATE OF MARYLAND.

An act further to amend the act incorporating the Chesapeake and Ohio Canal Company.—[Passed December Session, 1827.]

Whereas it is represented to this General Assembly, that it may tend greatly to the promotion of the object of the original act incorporating the Chesapeake and Ohio Canal Company, to authorize a subscription for its stock by aliens ; and doubts have arisen whether, under said act, such stock may be held by others than citizens of the United States, and whether the stock of said Company is to be regarded as real or personal property :

1. *Be it enacted by the General Assembly of Maryland,* That it shall and may be lawful for the Commissioners, for the time being, and for the President and Directors of the said Company, whensoever the same shall be duly organized, agreeably to the provisions of the original act aforesaid, to receive subscriptions for any number of shares of the capital stock of said Company, from any alien or aliens, who are hereby declared competent to hold the same ; and, if, in their judgment, it be necessary, to appoint an agent, or agents, to visit Europe for that purpose.

2. *And be it enacted,* That the shares of the capital stock of said Chesapeake and Ohio Canal Company shall be deemed and taken to be personal estate, and, as such, to be liable to be assigned and transferred : *Provided,* That it shall not be lawful for any stockholder in said Company to assign any share or shares, by him or her held, unless it be in person, or by attorney, upon the books of said Company : *And provided also,* That no transfer or assignment shall be made,

except from one or more whole share or shares, and not for any part of such share or shares ; and that no share or shares shall, at any time, be assigned or transferred, or held in trust for the use and benefit, or in the name of another, whereby the said President and Directors, or Stockholders, of the said Company, or any of them, shall or may be challenged, or made to answer concerning any such trust ; but that every person appearing, as aforesaid, to be a Stockholder, shall, as to others of the said Company, be, to every intent, taken absolutely as such ; but, as between any trustee and the person for whose benefit any trust shall be created, the common remedy may be pursued.

3. *And be it enacted*, That this act shall commence and be in force as soon as it shall have received the assent of the Legislature of Virginia, of the Congress of the United States, of the Potomac Company, and of the Stockholders of said Chesapeake and Ohio Canal Company, to be given at their first general meeting after the passage of this act.

At a General Meeting of the Stockholders of the Chesapeake and Ohio Canal Company, holded by adjournment, on Thursday, 3d July, 1828, it was

Resolved, That the act of the General Assembly of Maryland, entitled, "An act further to amend the act incorporating the Chesapeake and Ohio Canal Company," passed December session, 1827, be, and the same is hereby, assented to by this Company ; and that the said act of Assembly be, and the same is hereby accepted and adopted by this Company, as a part of their charter, so far as the same relates to, or concerns, this Company, and the same is hereby acknowledged to be obligatory on this Company.

ACT OF THE STATE OF VIRGINIA.

An act giving the assent of this State to an act further to amend the act incorporating the Chesapeake and Ohio Canal Company, passed by the State of Maryland.—[Passed Feb. 26, 1828.]

Whereas it is represented that the General Assembly of the Commonwealth of Maryland hath passed, at their present session, an act, entitled "An act further to amend the act incorporating the Chesapeake and Ohio Canal Company," in the words following to wit :

[See preceding act.]

1. *Be it therefore enacted by the General Assembly of this Commonwealth*, That the assent of this Legislature in and to the amendments to the "Act incorporating the Chesapeake and Ohio Canal Compa-

ny," as contained in the foregoing act of the General Assembly of Maryland, is hereby as fully and completely given, as if the said amendatory act had been passed by this present General Assembly.

2. This act shall be in force from the passing thereof.

ACT OF THE STATE OF PENNSYLVANIA.

An act incorporating the Chesapeake and Ohio Canal Company. [Passed 9th February, 1826.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the full and entire assent of this Commonwealth be, and the same is hereby, given to all and each of the provisions mentioned and contained in an act of the Legislature of the State of Virginia, passed the twenty-seventh day of January, one thousand eight hundred and twenty-four, entitled "An act incorporating the Chesapeake and Ohio Canal Company," so far as the same are or may be applicable to this Commonwealth; and the said act of the State of Virginia is hereby adopted, ratified, and confirmed, and enacted into a law of this Commonwealth, and all and each of the provisions, conditions, and restrictions thereof, as fully and effectually, as if the same were enacted, paragraph by paragraph, and section by section, so far as the same can apply to this Commonwealth; always, nevertheless, subject to the exceptions, provisions, and restrictions, hereinafter mentioned; and the said act shall hereafter be in full force and effect, wherever the same is applicable, as well within as without this Commonwealth, as an act incorporating the Chesapeake and Ohio Canal Company, for all and every of the objects and purposes therein set forth and provided for, according to the true intent and meaning of the said act of the State of Virginia; an exemplification whereof shall be annexed to this act, and be published in the same manner as the laws are usually published; and the Governor shall likewise cause an exemplified copy of the said act of Virginia to be deposited in the Secretary's office of this Commonwealth, and shall also transmit an attested copy of this act to the President of the United States, and one copy thereof to the Governor of Virginia, and one copy thereof to the Governor of Maryland.

SEC. 2. *And be it further enacted by the authority aforesaid,* That this act shall have no effect, unless, within three years from and after the passage hereof, the State of Maryland shall pass a law authorizing the State of Pennsylvania, or any company which may be for that purpose incorporated by the State of Pennsylvania, to take and continue a lateral canal or canals, or railway, from any point or points within the territory of Pennsylvania, to, and connect with, the Chesapeake and Ohio canal, within the territory of the said State of Maryland, and upon the same terms and conditions, and with all the rights, privileges, and powers, of every kind whatsoever, that the

Chesapeake and Ohio Canal Company may have to make the said Chesapeake and Ohio Canal, and unless the said Chesapeake and Ohio Canal Company shall assent to and accept the said law of the State of Maryland, within one year after it shall have been enacted : *Provided*, That, should the said Chesapeake and Ohio Canal be located on the south side of the Potomac, at any point or points below the town of Hancock, then the assent of Virginia, and the said Chesapeake and Ohio Canal Company shall also be obtained in like manner, before this act goes into operation, except so far as it requires the assent of Maryland to the right to make a railway through the territory of that State.

SEC. 3. *And be it further enacted by the authority aforesaid*, That, as a condition on which this act shall pass, no greater tolls shall be charged or paid on goods, commodities, and produce, entering and transported on the said Chesapeake and Ohio Canal, from such lateral canals, than are charged and paid on other goods, commodities, and produce, of the same kind, transported on the said Chesapeake and Ohio Canal: *And provided, further*, That the aforesaid Chesapeake and Ohio Canal Company shall extend the Chesapeake and Ohio Canal to, and terminate the same at, the city of Pittsburg.

SEC. 4. *And be it further enacted by the authority aforesaid*, That the said Chesapeake and Ohio Canal Company shall have full power and authority to alter and change the route of the western section of the said canal, so that the same may commence at the town of Cumberland, situated near the junction of Wills' creek, with the north branch of the Potomac, and be continued from thence, by the valley of Wills' creek and Castleman's river, to the Youghiogony, and from thence to the city of Pittsburg : *Provided*, That the United States' Board of Internal Improvement, or a majority thereof, should deem and report that route to be the best.

SEC. 5. *And be it further enacted by the authority aforesaid*, That, should the United States of America subscribe to the stock of the said Chesapeake and Ohio Canal Company, the said Company shall, within six months after receiving the sum subscribed, commence the western section of said canal, at such point or points as may be deemed most advantageous to the interests of the said Company : and it shall be their duty to apportion at least one half of the subscription of the United States to the western section of the said canal. And whatever amount of stock may be subscribed by the citizens of Pennsylvania, shall be expended wholly on the western section, unless authority is given to the said company, by the Pennsylvania subscribers, to expend their subscriptions differently : and in case of failure of the said company to comply with the provisions herein set forth, this act shall cease to have any force or effect whatever.

SEC. 6. *And be it further enacted by the authority aforesaid*, That, if the nett annual dividend of said company shall, for any two years in succession, exceed the amount of fifteen per cent. such excess shall be equally applied, by the President and directors, to the accommodation of the inhabitants of the shores of the Youghiogony and Monongahela rivers, and the country drained by the tributary streams there-

of, now navigable, or which may hereafter become so, in the same manner, in proportion to the distance, as is directed for the accommodation of the inhabitants of the shores of the Potomac and its tributary streams, by the eleventh section of an act of the State of Virginia, entitled "An act incorporating the Ohio and Chesapeake Canal Company," passed the twenty-seventh day of January, one thousand eight hundred and twenty-four.

SEC. 7. *And be it further enacted by the authority aforesaid, That* it shall and may be lawful for the said Chesapeake and Ohio Canal Company, at any place within this Commonwealth, on the route of the said canal, to sell or lease the use of the water contained therein, or in any embankment, dike, pond, or other improvement connected therewith, to any individual or individuals, or private company or companies, for that purpose incorporated by the State of Pennsylvania, for mills, or any other water works, or for irrigating any lands, or for supplying bleach grounds, tan-pits, or brick-yards, and the profits or rents resulting therefrom to take and receive, to and for the use and benefit of the said corporation, in addition to the tolls and profits allowed to be taken by the act of Virginia: *Provided, That* the navigation of the said canal be not thereby impeded or obstructed: *And provided further, That* the said Chesapeake and Ohio Canal Company shall not, at any time, be, directly or indirectly, engaged or concerned in any banking, merchandising, milling, or the erecting of mills, manufacturing, or mining, or in any other business whatsoever, except such as may be necessary and proper for the construction of such canal, and appurtenances, and the performance of the several functions of a canal company.

SEC. 8. *And be it further enacted by the authority aforesaid, That,* as a further condition on which the assent of this State is given to the Virginia act, aforesaid, that so far as regards the territory of Pennsylvania, whenever the said canal shall cross any public or private laid out road or highway, or shall divide the ground of any person or persons, so as to require a ford or bridge to cross the same, the jury, who shall inquire of the damages to be sustained, in manner directed by the fifteenth section of the Virginia act, shall find and ascertain whether a passage across the same shall be admitted or maintained by a ford or bridge; and, on such finding, the said Chesapeake and Ohio Canal Company shall cause a ford to be rendered practicable, or a bridge fit for the passage of carts and waggons to be built, and forever hereafter maintained and kept in repair, at all and every places so ascertained by the said jury, at the cost and charges of the said company; but nothing herein contained shall prevent any person from erecting and keeping in repair, any foot or other bridge across the said canal, at his own expense, when the same shall pass through his ground; *Provided, The* same shall be of such height above the water, as shall be usual in the bridges erected by the company; *And provided, also, That* such foot or other bridges, so to be erected by the owners of such lands, shall not interfere with any of the locks, buildings, or other works of the company, or with the navigation of the said canal.

SEC. 9. *And be it further enacted by the authority aforesaid, That the assent of the Legislature of this Commonwealth to the said act of the Legislature of Virginia, is given and granted upon the further express conditions, that any mesne process which may be issued against the said company, may be served on any toll gatherer, director, or other officer of the company; and such service shall be held good, valid, and effectual, as a service of such process upon the said Chesapeake and Ohio Canal Company; and that said company shall annually report to the Legislature of Pennsylvania the progress they may make in constructing the said canal; and also an annual abstract of their accounts, certified by the oath of the President of the said company, shewing the amount of capital stock actually paid in, and the sums deposited with the Treasurer for contingent and current expenses, and the profits which may have accrued, and the dividends made or declared during the preceding year.*

At a General Meeting of the Stockholders of the Chesapeake and Ohio Canal Company, holden by adjournment, on Saturday, 21st June, 1828, it was

Resolved. That, whenever the Western section of the Chesapeake and Ohio Canal shall be constructed, the Western termination thereof shall be at Pittsburg.

At a Meeting of the President and Directors of the Chesapeake and Ohio Canal Company, holden 26th June, 1828, it was

Resolved unanimously, That the route and site surveyed by the United States' Engineers, and by Messrs Geddes and Roberts, and communicated to Congress by the Executive of the United States, at various times, so far as the same correspond and agree, be adopted as the line of the Chesapeake and Ohio Canal, below Cumberland, on the river Potomac, with such inconsiderable variations therefrom as it may be found expedient for the President and Directors to adopt, with the advice of their Chief Engineer, in placing the same under contract, and in the execution of the contracts for completing the Canal.

Extract from an act of the State of Maryland, passed at December session, 1825, entitled "An act to incorporate the Susquehannah and Patapsco Canal Company."—[Passed 8th March, 1826.]

"SECTION 11. *And be it enacted,* That the State of Pennsylvania, or any company which may be for that purpose incorporated by the said State, shall be, and is hereby, authorized and empowered to

take and continue a lateral canal or canals, or a rail-way, from any point or points within the territory of said State, to connect with the Chesapeake and Ohio Canal, within the territory of this State, upon the same terms and conditions, and with all the rights, privileges, and powers, of every kind whatsoever, that have been granted to the Chesapeake and Ohio Canal Company : *Provided*, That the State of Pennsylvania shall, within three years from and after the passage of this act, assent to, and confirm this charter, so that the same may have full effect and operation within the limits of that State."

ACT OF THE STATE OF PENNSYLVANIA,

Giving the assent of this State to an act of the General Assembly of Maryland, entitled "An act to incorporate the Susquehannah and Patapsco Canal Company."—[Passed 7th April, 1826.]

SECT. 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the full and entire assent of this Commonwealth be, and the same is hereby, given to all and each of the provisions mentioned and contained in an act of the General Assembly of Maryland, passed the eighth of March, one thousand eight hundred and twenty-six, entitled "An act to incorporate the Susquehannah and Patapsco Canal Company," so far as the same may be applicable to this Commonwealth; and the said act of the General Assembly of Maryland is hereby ratified, adopted, and confirmed, and enacted into a law of this Commonwealth, and all and each of the provisions, conditions, and restrictions thereof, as fully and effectually as if the same were enacted paragraph by paragraph, and section by section, so far as the same can apply to this Commonwealth; and the said act shall hereafter be in full force and effect wherever the same is applicable, as well within as without this Commonwealth, as an act incorporating the Susquehannah and Patapsco Canal Company, for all and every of the objects and purposes therein set forth and provided for, according to the true intent and meaning of the said act of the General Assembly of Maryland; an exemplification whereof shall be annexed to this act, and be published in the same manner as the laws usually are published; and the Governor shall likewise cause an exemplified copy of the said act of the General Assembly of Maryland, to be deposited in the Secretary's office of this Commonwealth, and shall also transmit an attested copy of this act to the Governor of the State of Maryland. *Provided*, That, if the State of Maryland shall, when hereafter requested by the State of Pennsylvania, withhold her consent to the said State, or any company incorporated by the Legislature thereof, to make a canal or rail-way from the Susquehannah through the territory of Maryland, by the route of the Cumberland Valley to the Potomac, then the Legislature of Pennsylvania reserves the power to repeal this act.*

SEC. 2. *And be it further enacted by the authority aforesaid,* That nothing in this act contained shall be so construed as to authorize the said "The Susquehannah and Patapsco Canal Company" to erect or place any dam or dams, or other device, or works, in the river Susquehannah, in a way to injure the navigation of said river; and should the said company at any time hereafter erect or place any such dam, device, or other works, in the said river, the Legislature of Pennsylvania hereby reserves the right to repeal, at any time thereafter, this act, and to resume the privileges hereby granted.

SEC. 3. *And be it further enacted by the authority aforesaid,* That the said Susquehannah and Patapsco Canal Company are hereby required to connect with the river Susquehannah the canal hereby authorized to be made, by navigable lateral canals and locks, of the same dimensions as the main canal, at the most eligible point for facilitating the passage of boats and other craft from the Susquehannah and Patapsco Canal into the Susquehannah river, between the head of the tide and Havre de Grace, and at some point opposite or near to the mouth of the Conestoga, and also at or near the town of Columbia: and no greater rate of tolls per mile shall be charged on any boat, ark, craft, or other vessel, navigating said canal from York Haven, or on any other point on said canal above tide, to any point out of the said canal into the Susquehannah river or Chesapeake Bay, than shall be charged on the same description of vessels navigating the said canal from York Haven to the Patapsco, and the ascending navigation shall be subject to the same regulations; and if the said "The Susquehannah and Patapsco Canal Company" shall fail to construct said lateral canal, or shall neglect to keep the same in repair, so as to afford at all times a good ascending and descending navigation for boats or other craft navigating from the Susquehannah to the Susquehannah, or if the said company shall use the waters of said canal or canals for any other purpose than that of navigation, or if they shall directly or indirectly engage in any moneyed, commercial, manufacturing, or mining concern, within the State of Pennsylvania, or in any other business whatever within said State, except such as may be necessary or proper for the constructing of such canals and appurtenances, and the performance of the several functions of a canal company, or shall otherwise contravene the provisions of this act, that then, and in either case, the Legislature of Pennsylvania shall have full power to alter or repeal this act, and annul the privileges hereby granted to said Susquehannah and Patapsco Canal Company.

SEC. 4. *And be it further enacted by the authority aforesaid,* That this act shall cease to have validity if the said Susquehannah and Patapsco Canal Company shall not commence the said canal on or before the first day of January, one thousand eight hundred and thirty-one, and shall not complete the canal from York Haven to some point between the head of tide and Havre de Grace, on or before the first of January, eighteen hundred and forty-one.

ACT OF THE CONGRESS OF THE UNITED STATES.

An act to amend and explain an act, entitled "An act confirming an act of the Legislature of Virginia, incorporating the Chesapeake and Ohio Canal Company, and an act of the State of Maryland, for the same purpose."—[Approved May 23, 1828.]

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the assent already given by the United States to the charter of the Chesapeake and Ohio Canal Company, by an act of Congress, entitled "An act confirming an act of the Legislature of Virginia, entitled an act incorporating the Chesapeake and Ohio Canal Company; and an act of the State of Maryland confirming the same," shall not be impaired by any change of the route of the said Canal, from or above the town of Cumberland, on the river Potomac, or the distribution thereof into two or more sections, at any time hereafter, or any change in the dimensions of that part of the present Eastern section, extending from Cumberland, or the mouth of Wills' creek, to the mouth of Savage, at the base of the Alleghany, or any substitution which the interest of the Chesapeake and Ohio Canal Company may, in the opinion of the Company, require to be made, of inclined planes, rail-ways, or an artificial road for a continued Canal through the Alleghany mountain, in any route which may be, by the Company, finally adopted therefor, between the town of Cumberland and the river Ohio.

Sec. 2. *And be it further enacted,* That to obviate any possible ambiguity that might arise in the construction of the second section of the act of Congress aforesaid, the authority, by that act designed to be given to the States of Maryland and Virginia, or to any Company incorporated by either or both of those States, to extend a branch from the said Canal, or to prolong the same, from the termination thereof, by a continuous canal, within or through the District of Columbia, towards the territory of either of those States, shall be deemed and taken to be as full and complete, in all respects, as the authority granted by that act to the Chesapeake and Ohio Canal Company to extend the main stem of the said Canal, within the said District; or the authority reserved to the Government of the United States to provide for the extension thereof, on either or both sides of the river Potomac, within the District of Columbia: *Provided,* That nothing herein contained shall impair the restriction in the charter of the Chesapeake and Ohio Canal Company, designed to protect the Canal from injury, by the prolongation thereof, or by any branch therefrom.

Sec. 3. *And be it further enacted,* That the act of the Legislature of Maryland, which passed at their December session, of one thousand eight hundred and twenty-seven, entitled "An act further to amend the act incorporating the Chesapeake and Ohio Canal Company," be, and the same is hereby, confirmed, so far as the assent of Congress may be deemed necessary thereto.

ACT OF THE CONGRESS OF THE UNITED STATES.

An act authorizing a subscription to the stock of the Chesapeake and Ohio Canal Company.—[Approved, 24th May, 1828.]

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to subscribe, in the name and for the use of the United States, for ten thousand shares of the capital stock of the Chesapeake and Ohio Canal Company, and to pay for the same, at such times, and in such proportions, as shall be required of and paid by the stockholders, generally, by the rules and regulations of the Company, out of the dividends which may accrue to the United States upon their bank stock in the Bank of the United States: *Provided,* That not more than one fifth part of the sum, so subscribed for the use of the United States, shall be demanded in any one year after the organization of the said Company; nor shall any greater sum be paid on the shares so subscribed for, than shall be proportioned to assessments made on individual or corporate stockholders: *And, provided, moreover,* That, for the supply of water to such other canals as the State of Maryland, or Virginia, or the Congress of the United States, may authorize to be constructed, in connexion with the Chesapeake and Ohio Canal, the section of the said canal leading from the head of the Little Falls of the Potomac river, to the proposed basin, next above Georgetown, in the District of Columbia, shall have the elevation, above the tide of the river at the head of the said Falls, and shall preserve, throughout the whole section aforesaid, a breadth at the surface of the water, of not less than sixty feet, and a depth, below the same, of not less than five feet, with a suitable breadth at bottom.

Sec. 2. *And be it further enacted,* That the said Secretary of the Treasury shall vote for the President and Directors of the said Company, according to such number of shares as the United States may at any time hold in the stock thereof, and shall receive, upon the said stock, the proportion of the tolls which shall, from time to time, be due to the United States, for the shares aforesaid; and shall have and enjoy, in behalf of the United States, every other right of a stockholder in the said company.

ACT OF THE CONGRESS OF THE UNITED STATES.

An act to enlarge the powers of the several Corporations of the District of Columbia, and for other purposes.—[Approved, May 24, 1828.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Corporation of Washington, the Corporation of Georgetown, and the Corporation of Alexandria, within the District of Columbia, shall, severally, have

full power and authority to subscribe and pay for shares of the stock of the Chesapeake and Ohio Canal Company; and all such subscriptions as shall have been already made by either of the said Corporations, shall, and the same are hereby declared to be valid and binding on the said Corporations, respectively.

SEC. 2. *And be it further enacted*, That the said Corporations shall severally, have power and authority, from time to time, as the same may be deemed by them, respectively, either necessary or expedient, to borrow money, at any rate of interest not exceeding six per centum per annum, to pay their respective subscriptions, and the interest accruing thereon, to the amount which they have subscribed, or shall hereafter subscribe.

SEC. 4. *And be it further enacted*, That the said Corporations are, respectively, empowered to employ an agent or agents, for the purpose of obtaining subscriptions to the loan or loans authorized by this act, or of selling, from time to time, the certificates of stock which may be created in pursuance thereof, and to fix the compensation of such agent or agents, which they shall respectively pay, as well as all other expenses attending the said loans, out of the proceeds thereof, or of any other funds which they may respectively provide.

SEC. 5. *And be it further enacted*, That a tax, at the rate of one per centum; and thirteen hundredths of one per centum, on the assessed value of the real and personal estates within the City of Washington, as shall appear by the appraisement thereof, made under the authority of the Corporation, or of the several acts of Congress, hereinafter declared to be revived and in force, within the said Corporation, to be existing at the time hereinafter limited for the collection of the said tax; and at the rate of fifty-six hundredths of one per centum on the assessed value of the real and personal estate within the town of Georgetown, as shall appear by the appraisement thereof, made under the authority of the Corporation, or of the several acts of Congress, hereinafter declared to be revived and in force, within the said corporation, to be existing at the time hereinafter limited for the collection of the said tax; and at the rate of fifty-eight hundredths of one per centum on the assessed value of the real and personal estate within the town of Alexandria, as shall appear by the appraisement thereof, made under the authority of the corporation of the said town, or of the several acts of Congress, hereinafter declared to be revived and in force, within the said corporation, to be existing at the time hereinafter limited for the collection of the said tax; be, and the same is hereby, imposed and assessed on the real and personal estate lying and being in the said city and towns: and, upon the failure of the said corporations, or of any of them, to pay, into the Treasury of the United States, ninety days before the same shall become due, to the holder of the shares or certificates of such loan or loans, as aforesaid, according to the terms and conditions thereof, the sum or sums which they, or any of them, shall have respectfully stipulated to pay at the expiration of the period aforesaid, so that the same shall not be ascertained beforehand to be in readiness to meet the demand or claim about to

arise on the shares or certificates of the said loan—the President of the United States shall be, and he is hereby, empowered to appoint a collector or collectors, whose duty it shall be to proceed and collect the tax imposed, as above, on the real and personal estate in the said city and town, or either of them, the corporation or corporations of which shall have so failed to pay, as aforesaid, in advance, the sum or sums about to become due and demandable as aforesaid, or any part thereof remaining unpaid, as aforesaid, into the Treasury, ninety days in advance; such part, in case a part only be so in arrear, to be ratably and equally assessed, levied, and collected, upon the property chargeable as aforesaid, with the said tax, within the said city and towns, or either of them, making such default in paying as required, ninety days in advance, as aforesaid: the appraisement or assessment of the value of the said estates, preparatory to the collection of the said tax, if not previously made by the said corporation, to be made in the mode prescribed, as aforesaid, in the several acts of Congress, hereby revived and put in operation: *Provided*, That, if satisfactory evidence be afforded the President of the United States, by the several corporations aforesaid, that they are proceeding, in good faith, to raise and pay, in due time, their portions, respectively, of the said loan or loans, and will be competent to raise the same by the means on which they rely, he shall be, and he is hereby, empowered to restrain such collector or collectors from proceeding to collect the said tax within the corporation affording the evidence aforesaid, until the expiration of the ninety days aforesaid, when, if the amount of the said tax be not actually paid, the collection thereof shall proceed, without further delay, on notice to the collector of such default.

SEC. 6. *And be it further enacted*, That the collector or collectors, who may be appointed as aforesaid, shall give bond, with good and sufficient security, for the faithful performance of the duties required by this act, and shall possess all the powers, be subject to all the obligations, and proceed, in all respects, in the discharge of his or their duties, in collecting the said tax, as the several collectors possessed, were subject to, and were required to do, by an act, entitled “An act to provide additional revenues for defraying the expenses of Government, and maintaining the public credit, by laying a direct tax upon the District of Columbia,” approved the 27th of February, one thousand eight hundred and fifteen, and by the several acts of Congress, therein referred to, or which were subsequently passed, in order to alter or amend the same; all of which acts, for the effectual fulfilment of the purposes of this act, and according to the tenor and intent thereof, are hereby declared to be revived, and in full force, within the limits of the several corporations aforesaid.

SEC. 7. *And be it further enacted*, That the tax imposed by this act, shall be continued and collected, from time to time, according to the provisions and conditions of this act, and of the several acts aforesaid, so long as the proceeds thereof may, by any possibility, be required, to meet the payment of the several loans authorized as aforesaid: *Provided, however*, That all or either of the said corporations

may, in the negotiation of such loan or loans, as they or either of them, shall deem it expedient to make, in pursuance of the authority vested in them by this act, stipulate such terms or conditions, for the payment of the interest, or the redemption of the principal sum thereof, as shall dispense with the system of taxation provided by this act.

SEC. 8. *And be it further enacted,* That, in the event that any loan or loans shall be negotiated by the said corporations, or any one of them, to the extent, in the whole or in part, of the subscription of one or all of the said corporations, to the stock of the Chesapeake and Ohio Canal Company, in conformity with the provisions of this act, and based upon the system of taxation therein provided; a copy or copies of the contract or contracts, for any and all such loans, shall, as soon as practicable, after the execution thereof, be deposited, either by the corporation or corporations contracting such loan or loans, or by the creditor or creditors interested therein, with the Secretary of the Treasury; and, out of all such sums as shall be paid, by the respective corporations, in advance, as aforesaid, on account of their several contracts, or, as shall be levied and collected, in manner hereinbefore provided, the holders of the certificates of any such loan shall be entitled to receive, at the Public Treasury, such amount as may be due to them, respectively; and, on the occurrence of any deficiency in the sum or sums, voluntarily paid in, or assessed and collected, within the said corporations, respectively, for the payment of their respective creditors, the extent of such deficiency shall be ascertained by the Secretary of the Treasury, from a reference to the terms of the loan or loans, in relation to which such deficiency may occur; and, being so ascertained, and published in some one or more newspapers, printed in the District of Columbia, the Secretary of the Treasury shall instruct the proper collector to proceed to collect, and pay into the Public Treasury, the said amount, with all lawful charges attending the same, according to such further ratable assessment, upon the estates and property within the jurisdiction of the corporation in arrear, according to the provisions of this act, and of the several acts referred to therein, as shall be sufficient to supply such ascertained deficiency; and, on the completion of such collection, the holder or holders of the certificates of the stock of the corporation shall be entitled to receive such amount as may have been found due, and unprovided for, by the sums before paid in, or collected, on account of such corporation.

[Under the authority of the foregoing acts, the following were appointed commissioners for receiving subscriptions to the stock of the Chesapeake and Ohio Canal Company, on the 21st May, 1825 :

By the President of the United States :

Samuel H. Smith,	} For the District of Columbia.
Anthony C. Cazenove,	
Clement Smith,	

By the Governor of Virginia :

John C. Hunter,
William Ellzey,
Richard H. Henderson.

By the Governor of Maryland :

Samuel Sprigg,
Frisby Tilghman,
Philip E. Thomas.]

AN ACT (of the Corporation of Washington) to authorize a subscription to the capital stock of the Chesapeake and Ohio Canal Company.

Be it enacted by the Board of Aldermen and Board of Common Council of the city of Washington, That on the opening of the books for receiving subscriptions to the capital stock of the Chesapeake and Ohio Canal Company, the Mayor be, and he is hereby authorized to subscribe for ten thousand shares of the capital stock of said company, in the name and for the benefit of this Corporation.

Approved, September 13th, 1827.

JOSEPH GALES, Jr.

Mayor.

AN Ordinance (of the Corporation of Georgetown,) authorizing a subscription for two thousand five hundred shares of the capital stock of the eastern section of the Chesapeake and Ohio Canal Company.

Be it ordained by the Board of Aldermen and Board of Common Council of the Corporation of Georgetown, That the Mayor be, and he is hereby, authorized to subscribe, in behalf of this Corporation, for two thousand five hundred shares of the capital stock of the eastern section of the Chesapeake and Ohio Canal Company, so soon as the books for receiving subscriptions therefor shall be opened, and to meet the instalment due at the period of subscription, the Clerk is hereby authorized and required to pay to the order of the Mayor, the sum of two thousand five hundred dollars, out of any unappropriated money in the Treasury.

WILLIAM JEWELL,

President Board Common Council.

JAMES DUNLOP,

Recorder, and President Board of Aldermen.

Approved 22d September, 1827.

JOHN COX,

Mayor.

True copy from the record, Test :

JOHN MOUNTZ, Clerk.

AN ACT authorizing a Subscription, by the Common Council of Alexandria, for Stock of the Chesapeake and Ohio Canal Company.

SEC. 1. *Be it enacted by the Common Council of Alexandria, That the President of the Common Council be and he is hereby authorized and required, for and on behalf of the Common Council of Alexandria, to subscribe two thousand five hundred shares, of one hundred dollars each, to the capital stock of the Chesapeake and Ohio Canal Company, which subscription shall be binding and obligatory on the Corporation when the Congress of the United States shall have authorized a subscription for not less than ten thousand Shares of the capital stock of the said company.*

SEC. 2. *And be it further enacted, That this Act shall commence and be in force from and after the passing thereof.*

Passed in council this tenth day of November, eighteen hundred and twenty-seven.

Approved,

JOHN C. VOWELL, *Pres. C. C.*

Test,

THOMPSON F. MASON, *Mayor.*

J. P. THOMPSON, *Clerk.*

*Office of the Chesapeake and Ohio Canal Company,
WASHINGTON, April 24th, 1830.*

I hereby certify, that on the 2d day of October, 1827, the amount of Stock subscribed for (unconditionally subscribed for) in the Chesapeake and Ohio Canal Company, exceeded the sum of one million and five hundred thousand dollars, over and above the subscriptions payable in the stock and debts of the late Potomac Company.

JOHN P. INGLE,
Clerk Chesapeake and Ohio Canal Co.

B.

The evidence that the left bank of the Potomac river had been appropriated to the continuous canal, by which the entire fall of more than six hundred feet between Cumberland and the tide was to be overcome, was submitted to the Chancellor by the council who first addressed the Chancellor in behalf of the Chesapeake and Ohio Canal Company, and consisted of :

1st. The report of the Principal Engineer of the Board of Public Works of Virginia, submitted to the Legislature of that State by the Governor, on the 27th day of December, 1820.

2d. Of the report of the Commissioners appointed by the Legislatures of Maryland and Virginia to survey the river Potomac, and to report a route and an estimate of the cost of a canal from tide

water to the highest point to which the improvement of the navigation of the river could be carried.

3d. Of the 1st and 2d reports of the United States' Board of Internal Improvement, the last of which was accompanied by maps, delineations, and estimates of the route, dimensions, and cost, of a canal from Georgetown to Pittsburg, communicated to Congress on the 14th day of February, 1825, and the 7th day of December, 1826, respectively published by their order, and referred to in those proceedings of the citizens of Baltimore which preceded the application for the act of incorporation of the Baltimore and Ohio Rail Road Company.

4th. Of the re-examination and revision of the route, plan, and estimates of the United States' Board of Internal Improvement, made pursuant to an order of the President of the United States, at the instance of many members of the House of Representatives, and communicated by message to the House of Representatives, on the 18th of January, 1828, in a report to the Department of War, by two Civil Engineers, Nathan S. Roberts, and James Geddes, which report was accompanied by maps and plans, and published by order of the House of Representatives.

This evidence is contained in the following extracts from those reports :

First.

" On the 30th of the 6th month (June) 1820, I commenced the examination.

" The examination of the river from Cumberland downwards, was commenced on the 10th of the 7th month, (July 18, 1820.)

" Just below Shepherdstown, a long, shallow ripple occurs. The navigation is then good to the head of the *long canal*, at the beginning of the Shenandoah Falls.

" About one-half a mile below the ferry, (Harper's Ferry) are *two short canals*, called by the boatmen, Bullring Falls.

" The dam of the Seneca Falls requires repairing, so as to turn more water into the canal.

" The greatest obstruction to the navigation any where below Williamsport, in the present state of the water, is at the Great Falls."

" The dam requires repairing and extending, so as to guide at least six or eight inches more water in the canal.

" The bed of the river from the Great Falls to the head of the Little Falls Canal is generally very rough.

" The current for some distance below the falls is so rapid in high water, and likewise so deep, that it renders useless the setting poles : and the unevenness of the crags on shore makes it extremely difficult and dangerous to carry a towing line over them.

" At Stubblefield Falls, the pass is safe for descending boats, except that the rapidity of the current over the uneven bottom produces a roughness, that when full loaded, causes them to ship

“ water ; but the angle of ascent is so great, and the sluice being
 “ situated in the middle of the river where no advantage can be
 “ derived from towing, it is in vain to think of ascending with any
 “ thing like a full load.

“ But when the powers of art have been exerted to the utmost
 “ extent, to produce an easy navigation in the bed of a stream, still
 “ it must hold a very inferior grade to that of an independent canal ;
 “ because the natural fall of the river must be overcome by the labor
 “ of man ; and if the whole fall of a river is great in proportion to
 “ its length, it will require a great number in proportion to the ton-
 “ nage : and therefore must be very expensive compared to a canal
 “ finished with locks, where the loaded boats are drawn on level water
 “ by the labor of horses. But this kind of improvement requires large
 “ funds, and should not be undertaken until the period arrives that
 “ gives a reasonable prospect of remuneration from the trade that
 “ may be carried on through its channel.

“ The transportation, however, on such a canal, is so much cheaper
 “ than by any other means of internal improvement, that it may
 “ happen, and I believe it sometimes does happen, that such a period
 “ arrives, before those concerned think of making a single calculation
 “ on the subject. Knowing the great superiority of this mode of
 “ improvement, and believing it may possibly be some time adopted
 “ in the Potomac, I have so far made myself acquainted with the
 “ grounds adjacent to the river, as to enable me to form some esti-
 “ mate of the expense of an independent canal from *Cumberland* to
 “ the Great Falls. From *Cumberland* to the Great Falls is 176
 “ miles. The fall in this distance is 572 feet. It is to be remem-
 “ bered, that canals conducted on low levels along the ravines of a
 “ river, have no deep vallies or ravines to cross, as they must neces-
 “ sarily have on high levels in an uneven country, and therefore
 “ the great embankments and elevated aqueducts which constitute
 “ the largest items of expense on many canals, are avoided.”

“ On such a canal as this, the actual cost of transportation for a
 “ barrel of flour from *Cumberland* to the Great Falls, would not
 “ exceed 15 cents, nor a bushel of coal 6 cents, and other articles in
 “ proportion, provided the boats were supplied with one-quarter
 “ back load of plaster of Paris, or any thing else at the low price of
 “ \$3 per ton.”

“ Having given this description of the river, and the foregoing
 “ estimates, it must remain for the company after consulting the
 “ state of their funds, and other circumstances, over which I have
 “ no control, to determine on the most proper mode of expending
 “ money in future on this very important river.”

The preceding report made a part of and was printed with a mes-
 sage from the Governor of Virginia to the House of Delegates, on the
 27th of December, 1820.

Second.

"To his Excellency, the Governor of Maryland :

"The commissioners appointed by the law of Virginia, and the resolutions of Maryland, of the year 1821, jointly to examine the affairs of the Potomac Company, the state of the navigation of the river Potomac, its susceptibility of improvement, and to make report, whether the said Company had complied with the terms of its charter, granted by the two States, and its ability to comply with in a reasonable time, and whether any, and what aid should be given to the said Company, and what would be the best means of effecting an improvement in the navigation of the said river, report :

[EXTRACT FROM THE SAME.]

"Upon a full view of the different plans, therefore, it cannot for a moment be doubted, but that the adoption of a regular canal, out of the river, though following its ravine, will be the most useful and durable improvement, and when the advantages and cost of each mode, (that by 'sluices,' by 'dams and locks,' and by a 'continued canal,') are relatively considered, incomparably the cheapest."

The Engineer engaged by the Commissioners, having died in the progress of the survey, another Engineer was engaged to complete his labour; and from the last, a report was made to the Commissioners, from which the following is an extract :

"It has been deemed expedient to divide into sections the proposed canal, for the purpose of facilitating its execution. The first section extends, from the commencement at Cumberland, in Maryland, to the mouth of Capon in Virginia, 54½ miles : the second section, from the mouth of Capon, to the mouth of the Great Conococheague, or Williamsport, in Maryland, 33½ miles : the third section, wholly on the Maryland side of the river, from the mouth of Great Conococheague, to Harper's Ferry, opposite the mouth of the Shenandoah river, 38½ miles : the fourth section, still on the Maryland side, from the head of the Great Falls, to tide water, in the District of Columbia, 12 miles : amounting altogether, to 185 miles of canal navigation, from Cumberland, to tide water."

"Recapitulation.—The first section commences at Cumberland, in Maryland, and crossing the river three times, terminates at the mouth of Capon, on its western bank. The first crossing to the Virginia shore, just above Crassy's landing, sixteen miles from Cumberland, is by a dam, of suitable elevation; then descending by locks, into the still-water, above the dam, will pass through a guard lock into a canal on the opposite shore."

"The second, crossing to the Maryland shore, is also by means of a dam placed just below the mouth of South Branch, 19 miles from Cumberland, to raise the water in the Potomac eight feet. In every case where a dam is the means of crossing a river, a guard-lock is indispensable at the entrance of the canal on the opposite shore. Aqueducts, however, as the mode of crossing rivers, with a canal,

are on account of the superior safety and convenience which the afford to navigation, decidedly preferable to dams, although more expensive in construction ; yet, where we cannot avail ourselves of sufficient feeders from side streams to keep always a full and certain supply of water in our upper levels, dams are adopted, because, by them, we obtain from the river an abundant supply. This is precisely the case in the first crossing ; and, in the second, there is not sufficient elevation for an aqueduct."

"The second section commences with an aqueduct across Capon, and, continuing on the Virginia side, 14 miles, crosses the Potomac on an aqueduct to the Maryland shore, and terminates at the western bank of the Great Conococheague."

"The third section commences with an aqueduct across Great Conococheague, and, continuing on the Maryland side, terminates at Harper's Ferry."

"The fourth section commences at Harper's Ferry, and, continuing on the Maryland side, terminates at the head of the Great Falls."

"The fifth section commences at the head of the Great Falls, and, continuing on the Maryland side, terminates at the head of tide water navigation, in the District of Columbia."

Subscribed

ISAAC BRIGGS.

GEORGETOWN, 12th Month, (December) 19, 1822.

The Commissioners' Report to the Governor of Maryland, embracing the above, is dated Georgetown, December 19, 1822, and subscribed by

ATHANS. FENWICK,
WILLIAM NAYLOR,
MOSES T. HUNTER.

Third.

Extracts from the President's Message of February 14, 1825, to the House of Representatives:

"From the views which I have taken of these reports, I contemplate results of incalculable advantage to our Union, because I see in them the most satisfactory proof that certain impediments which had a tendency to embarrass the intercourse between some of its most important sections, may be removed without serious difficulty."

JAMES MONROE.

Extract from the Letter of the Secretary of War, which accompanied the Report in its passage, from his office, to the President:

WAR DEPARTMENT, February 12, 1825.

"The Board have reported favorably as to the practicability of passing the summit level between the waters of the Potomac and the

Ohio, by means of a canal; and that it may be effected at a small expense, compared with the advantages expected to result from its execution, in a national and commercial point of view."

J. C. CALHOUN.

Extract from the instructions given the Board of Internal Improvement by the Chief Engineer of the Department of War:

"The Board will proceed to make an immediate reconnoissance of the country between the tide waters of the river Potomac and head of steamboat navigation of the Ohio, and between the Ohio and Lake Erie, for the purpose of ascertaining the practicability of a communication between those points, of designating the most suitable route for the same, and of forming plans and estimates in detail of the expense of execution."

"It is very desirable that the report should be received on this important line of communication in time to be submitted to Congress at their next session."

ALEXANDER MACOMB,
Maj. Gen. Chief Engineer.

Extract from the Report made pursuant to these instructions:

"CHESAPEAKE AND OHIO CANAL."

"This canal may be divided in three sections, eastern, middle, and western.

"EASTERN SECTION."

"This section ascends the valley of the Potomac; as the several ridges which that river traverses and breaks through, oblige to follow its course, without any deviation, the side on which it should ascend along the river, is the only choice left to the Engineer. We will, therefore, compare the respective facilities for receiving the bed of a canal, which exist on each of these sides.

"From Georgetown to the Little Falls' bridge the northern shore of the river is flat, whilst, on the southern shore, the mountain extends close to the stream and is more abrupt.

"From the Little Falls to the Monocacy the northern is very rugged; but from the Monocacy to Harper's Ferry it offers a succession of flats and bluffs. The southern shore on that whole extent is very rugged; its banks of red slate hang perpendicularly over the stream in several places.

"From Harper's Ferry to Shepherdstown, both shores present undulating flats, and a soil easy to work. The same nature of ground runs from Shepherdstown to Williamsport.

"From Williamsport to Hancock, the northern shore presents extensive flats, whilst the mountain on the southern shore stretches closer to the bed of the river.

"From Hancock to Town-creek, the northern shore is flat, to the promontory, formed by Sidelong Hill, and from thence presents a succession of flats to Town-creek. The southern shore offers no greater facilities, except on front of Sidelong Hill.

"From Town-creek to Oldtown, the flats on the northern shore are only interrupted by a precipitous bluff, on an extent of about 300 yards. The southern shore presents no advantages over it.

"From Oldtown to Cumberland, the northern shore is flat, except for one mile along Alum Rock, and the same extends along Braddock's Hill.

"This short analysis is sufficient to show, that the northern side of the valley offers the best ground for receiving the bed of a canal. Some portions of the southern bank might be more favorable than the portions of the northern shore which face them; but in order to render this advantage available, it would be necessary to cross the river frequently by aqueducts, which would cost more than the expense required to subdue the obstacles of the northern shore.

"Another important consideration, which should determine our preference of it, is its exposition to the south, by means of which, the canal will be earlier and longer navigable, and less subject to be seized by sudden frosts in spring and autumn.

"In descending from Cumberland, the canal will cross Evets creek. From thence to Braddock's Hill, it will follow the left shore; but if it run farther on that side, shelves should be cut through Braddock's Hill, Alum Hill, and Oldtown bluff, or it should turn round them on embankments, supported by walls.

From Town-creek to Sidelong Hill, the narrow strip which runs along the left shore, offers the best ground for the canal, which must cross Town-creek and Fifteen mile creek on aqueducts.

"The long and perpendicular bluff of Sidelong Hill, compels to cross the Potomac above the mouth of this creek, and follow the right shore till you reach opposite Conoloway creek.

"From the Conoloway to the Conococheague, at Williamsport, the canal may follow the left shore, crossing the Conococheague on an aqueduct.

"From thence to the foot of Elk Mountain, in front of Harper's Ferry and the Shenandoah, it continues on the same side crossing Antietam creek.

"From Elk Mountain to the Monocacy, the left shore offers the best ground, though it presents two formidable obstacles, South and Catoctin Mountains. The canal must be led along these points, on shelves or embankments."

S. BERNARD, *Brig. Gen.*

JOS. G. TOTTEN,

Maj. Eng. Brevet Lt. Col.

Washington City, Feb. 2, 1825.

"WASHINGTON CITY, October 23, 1826.

"The foregoing facts and investigations, connected with those exposed in the report A, (Feb. 1825,) lead us to recommend the following route for the Chesapeake and Ohio Canal:"

“From Georgetown, D. C. to Cumberland, it will ascend the valley of the Potomac, thence the valley of Wills’ creek to the mouth of Bowman’s run. It will then cross the summit ridge by a tunnel, and descend in succession the valleys of Casselman’s river and the Yougiogany, to terminate at Pittsburg, Penn., at the mouth of the Monongahela.”

“EASTERN SECTION.

“From Cumberland to Georgetown the valley of the Potomac is rapid, and its sides formed of a succession of bluffs and narrow flats ; the bluffs on one side being generally opposite to the flats on the other. The parts which offer the greatest obstacles to the location of the work, are those where the stream forces its way through the high ridges whose direction is transverse to the bed of the river. At these places the banks are steep, the stream much winding, and its velocity very great, owing to falls and rapids. Whilst the flats present no difficulties, the bluffs and steep parts oblige, absolutely, to have the canal supported by walls whose height would place the work above the reach of freshets, and whose other dimensions should be calculated to resist the impetus of the stream. The freshets are from 15 to 30 feet in height, and the general fall of the river bed, 3 feet nearly per mile.

“To avoid the parts which, by their steepness, oppose the greatest difficulties to the location of the canal, the crossing of the stream, in order to place the work on each bank alternately, is the first idea which presents itself. But the adoption of such a system would lead into the difficulties and great expenses attending the erection of permanent and solid aqueducts across the Potomac ; and, also, would oblige to keep, in many places, the level of the canal at an elevation which would affect materially the other requisites of the work.

“After due investigations upon this subject, we remain convinced that it is more expedient, less expensive, and liable to less accidents, to keep, without deviation, on the same side of the valley ; and the Maryland side has received the preference, for the following reasons: The obstacles are generally of less magnitude than on the Virginia side ; the exposure is more favorable, and will cause in the Spring an earlier, and in the Fall a later navigation.”

“S. BERNARD, *Brig. Gen.*

“*Member of the Board of Internal Improvements.*

“WM. TELL POUSSIN,

“*Capt. Top. Engineers, Assistant to the Board.*

“WM. HOWARD,

“*Civil Engineer, Assistant to the Board.*”

Fourth.

Extract from a report made by Messrs. Geddes and Roberts to the Secretary of War, communicated, in part, to the Committee on Roads and Canals of the House of Representatives, on the 10th of January, 1828, and, in whole, to the House of Representatives, by the Secretary of War, on the 10th of March, 1828.

"The undersigned beg leave to report, that, in pursuance of an appointment to view the route and revise the estimates of the Chesapeake and Ohio Canal, a careful and particular location and survey has been made of the Eastern section thereof, commencing one mile below Cumberland, and terminating at the tide-water, at the city line of Georgetown. Maps and profiles of the same are herewith presented. Of the estimated expense, three different calculations have been made."

"*First*—For a canal and locks of the dimensions of the State canals of New York, Pennsylvania, and Ohio; having, at hand, accurate calculations of their various structures, and tables of the different depths of excavation and embankment, slope, &c. Those canals are forty feet at the water surface, four feet depth of water, and twenty-eight feet wide at bottom. The locks are ninety feet in the chamber, and fifteen feet in width.

"*Second*—For a canal of the dimensions required by the Board of Engineers, viz: forty-eight feet at the water line, with serf berms two feet horizontally on each side, five feet depth of water, and thirty three feet in width at the bottom. Locks one hundred and two feet in the chamber, and fourteen feet in width; and,

"*Third*—For a canal, as recommended by the Committee on Roads and Canals, 'that, wherever practicable by common excavation, the said canal shall have its surface enlarged to sixty feet, with a proportionate breadth at the bottom,' which is computed at forty-five feet, and five feet depth of water. The dimensions of the locks the same as recommended by the Board of Engineers, viz: one hundred and two feet in length, and fourteen feet in width. Those portions of the proposed canal which have been widened to forty-eight and sixty feet amount to one hundred and twenty-six miles, and two hundred and ninety-nine yards, and which may be considered as the most feasible kind of earth for excavation, &c., being mostly on old alluvial bottom, free from roots and stones, and along moderate slopes, from six to twelve degrees of declivity.

"These parts of the canal, which, from motives of safety and economy, are not enlarged over forty feet at surface, amount to sixty miles and one thousand and fifty-four yards, and include all the deep embankment, steep side-hill cutting, and embankments in the river—on basements of stone, from fifteen to thirty feet wide, and from two to eight feet deep, or to the surface of the water, are calculated, where necessary; and protected on the outside by a strong paving of stone, of the average thickness of two feet from the basement to the top of the embankment, with a slope of one and a half base, to one perpen-

dicular. These two portions make the whole length of the Eastern section, one hundred and eighty-six miles and one thousand three hundred and fifty-three yards. Each sub-division of which has been divided into miles and shorter distances, and carefully estimated, together with the necessary culverts, aqueducts, bridges, locks, waste weirs, dams, and feeders; all which are included in the following calculations. The result is given at the end of each sub-division, and the grand result at the conclusion."

"Remarks on first subdivision.

"The river embankment and paving are at the Narrows, Braddock's Hill, Alum Hill, and other places not named.

"It is proper to observe, that the descriptions of difficulties and facilities, as given by the report of the United States' Engineers, has been found to apply to each subdivision with usual accuracy."

"Remarks on second subdivision.

"On the 31st mile of the 2d subdivision, a dam across the Potomac, and a feeder to the canal, is calculated to enter below the 12th lock. This dam will form the second spacious basin for the accommodation of the Virginia side, connected with the canal by the short navigable feeder and the guard lock."

"Remarks on the fourth subdivision.

"The expensive parts of this subdivision, and such as would not bear widening, are, side hill excavation near Fort Frederick, the cut through Prater's neck, and the river embankment between Prater's neck and Williamsport, in two places. In these places, the earth is supposed to be brought from the Virginia side of the river, and the price (one hundred and two thousand, eight hundred and sixty-nine dollars and ninety cents, for one mile) is made to cover that, and, also, the expense of the stone basing for the banks, and making a secure lining for the canal. The stone for paving abound wherever they are wanted."

"Remarks. On the 6th subdivision, below the junction of the Shenandoah with the Potomac, a dam is calculated to raise the water about three feet, or, so high as not to injure the hydraulic power at the public works. This will form the third spacious basin in the Potomac, and, at this point especially, it would be of great public utility to the establishment of the United States at Harper's Ferry, as well as the trade of the Shenandoah.

"It is computed that this feeder from the Potomac, will supply the canal to the head of the Seneca Falls, and supersede the necessity of resorting to the Monocacy or Seneca creeks, and thereby save the damage done to mill owners, which must be considerable if those streams were diverted from their present channels.

"It may be here observed, that those streams have been surveyed for feeders, as may be seen on the maps; but, for the above reasons, are not included in these estimates."

"Remarks.—On the 2nd mile below the mouth of Seneca creek, a low dam is calculated across the Potomac, at the head of the Sene-

“ ca falls : this will afford a spacious sheet of still-water, from the
 “ site of the proposed dam, above the quarry where the Seneca stone is
 “ obtained, and will form the 4th spacious basin for the accommoda-
 “ tion of Virginia, and the supply of water thus received into the ca-
 “ nal will prevent the necessity of taking the Seneca creek for a
 “ feeder, which is so valuable a mill stream ; and, therefore, is not
 “ included in this estimate.

“ From Harper’s Ferry to Seneca Falls, where the next feeder en-
 “ ters, is over thirty-nine miles ; and should all the water that could
 “ be made to enter the canal above, prove insufficient, for said dis-
 “ tance, enough could be taken through short feeders, from Catoctin,
 “ Tuscarora and Little Monocacy creeks, without disturbing mill
 “ owners.

JAMES GEDDES,

Civil Engineer.

NATHAN S. ROBERTS,

Civil Engineer.

A slight attention to the map of the State of Maryland will shew that the preceding location of the eastern section of the canal is along the south side of the Potomac.

The proof, that the left bank of the river was always contemplated by the States, the United States, and the corporations and individuals who subscribed to the stock of the canal on the faith of those surveys and estimates, was further corroborated by reference to the geology of the country through which the Potomac passes, the geographical position of Cumberland and Georgetown, as well as Washington, on the left bank of the river, the Southern exposure afforded along the left bank, and the cost and hazard of constructing two aqueduct bridges across the main river, if the canal be driven from the left bank to the right bank, or from the Maryland to the Virginia shore.

Under the first of these heads, reference was made to the high and precipitous cliff, and very deep water along the Virginia shore next above Georgetown, and the uneven ground along various other falls and narrow passes of the Potomac.

Under the last, the relative difficulties and hazard of carrying a canal and rail road across the Potomac, were contrasted, with a view to demonstrate, that, if either work should cross the river, the railway might, to give place to the canal, since an aqueduct bridge has its level prescribed by that of the water of the canal, and must occupy a space of eight feet above the bottom of the canal, in addition to the depth of the arches and their necessary cover of earth.

Under the 3d, it was contended, that those frosts which would suspend the use of the canal much longer in the year, if it were conducted along a North, than a South exposure, would be much less injurious to a rail road; and, for that reason, the rail road should give place to the canal, on that shore so long appropriated to its use.

C.

THE BALTIMORE AND OHIO RAIL-ROAD COMPANY,

vs.

THE CHESAPEAKE AND OHIO CANAL COMPANY, AND OTHERS.

BILL No. 1.

To the Honorable THEODORICK BLAND, Chancellor of Maryland :

The Bill of complaint of the Baltimore and Ohio Rail Road Company, respectfully sheweth,

That by an act of the Legislature of Maryland, passed at December session, eighteen hundred and twenty-six, entitled, An act to incorporate the Baltimore and Ohio Rail Road Company, it was enacted, that as soon as ten thousand shares of the capital stock of said Company should be subscribed, the subscribers thereof should be incorporated into a Company, by the name of the Baltimore and Ohio Rail Road Company, and should be clothed with all the powers necessary to the construction of a Rail Road, from the city of Baltimore to the Ohio river; that the sum required in order to the incorporation and organization of said Company, having been previously obtained, the said Company was duly organized by the election of a President and Directors to manage the affairs of the same; that the subscriptions to the capital stock of said Company, having been augmented, so as to amount in all to four millions of dollars, the said Company found itself at once prepared to commence the construction of said road; and, possessed of means deemed at least sufficient for its completion to the town of Cumberland, in Alleghany county, and with a view to the construction of said road, the President and Directors of said Company, caused all the various routes for said road to be examined by skilful engineers, in order to the determination of the general direction, who ultimately recommended the adoption of the southern route of the said road, to wit: from Baltimore to the Potomac river, by the waters of the Patapsco and the Monocacy, striking the Potomac at the point of the rocks on the north eastern side of the gap, at which the Potomac passes through the Catoctin mountain, and thence to Williamsport, and thence with the Potomac, with inconsiderable deviations, to Cumberland; that the route for said road was finally adopted by the said President and Directors; and the said President was ordered, by a resolution of the said Board of Directors, to proceed at once to the construction of said road upon said route. Your orator further sheweth, that, after the route for said road had been definitively ascertained by said report, and a day for the commencement of the operations of the Company thereon assigned, the said President and Directors deputed engineers, to pass along the route thus adopted, and wherever the character of the ground was such as to leave but little choice as to the location of said road, to make an actual location of the same at once over such ground,

so that the said actual locations might serve as regulating points for its location over the intermediate sections, and secure the passage of said road; and the said President and Directors also deputed agents and attornies to accompany said engineers, who were directed and required, by the said President and Directors, to take all necessary or proper steps, to procure a title to the lands over which said actual locations were made, or to a right of way over them.

Your orator further sheweth, that under and in conformity to the requisitions of the said President and Directors, the said engineers proceeded at once to the actual location of said road, over such portions of the route from the Point of Rocks aforesaid, to the town of Cumberland aforesaid: of which specifications of said locations, which have been adopted and confirmed by the said President and Directors, and which extended from the Point of Rocks inclusive, through Frederick, Washington, and Alleghany counties, to and over the lands of John Mitchell, in Alleghany county, lying immediately above Mitchell's rocks, and above the lands of John Folck, are herewith exhibited, marked A, B, C, D, E, F, G, H, I, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Aa, Bb; that all the said locations were made with a bona fide intention on the part of your orator, of perfecting its incipient title to the lands included in said locations, or on the route of said road by purchase, condemnation or otherwise, and of proceeding as speedily as possible to the construction of said road over the same; that acting with this intention, and designing to accomplish this object, the said President and Directors therefore deputed agents and attornies to procure a title to the same, or a grant of a right over the same as aforesaid; and that the aforesaid agents and attornies of the said Company, in pursuance of the authority aforesaid, and to accomplish the objects aforesaid, have obtained from George Snouffer, Patrick D. McGill, James Hook, Peter Miller, Philip Grove, Peter Beeler, David M'Minn and Charles M'Minn, Margaret and Daniel Souder, Susannah Beeler, David Hahn, John D. Grove, Grafton Duvall, Lloyd Luckett, Lingan Boteler, Thomas Conn, Patrick O'Bryone, John Blackford, Adam Myers, George Cronise, Elizabeth Cronise, Mathias Strong, Jr., Recamah Stevens, Peter Palmer, John Booth, Samuel M. Hitt, Emeline V. Corbaley, Henry Clagett, James B. Wager, Gerard Wager, Catherine Wager, Anthony Snyder, Jacob T. Towson, Frederick Dellinger, George Snider, Watkins James, Henry Dellinger, Michael Smith, Joseph Smith, Jacob Barkman, Joseph Charles, Jr., Joseph Charles, Sen. Nicholas Lowe, Henry Wells, Alexander Moore, Sarah Jaques, James H. Bowles, John Johnson, Paul Summers, George Harvie, Daniel Rieley, John O'Ferrall, Jacob Martin, James King, William Hughes, Ludwic Rodene, William Golding, Stephen Fouty, Walter M'Attee, and Nathan Tracy, relinquishments or agreements under hand and seal, binding themselves, their heirs and assigns, to grant to your orator a right of way for the Baltimore and Ohio Rail-Road, either specifically, according to the said actual locations, or generally, so as in either case to bind all their lands lying within the said actual locations.

Your orator further shows, that all its abovementioned acts, in locating said road, and obtaining and securing a right of way for said road, over the lands included in said locations, were done by your orator, in strict pursuance of the powers conferred upon it by the abovementioned Act of Assembly, and with a view to the accomplishment of the objects for which said company was incorporated, in the best possible manner, and not merely with the intent or design on the part of your Orator, to impede or obstruct the Chesapeake and Ohio Canal, or Potomac Companies, hereinafter mentioned, in the exercise of their respective powers ; and that to carry into effect the agreements and relinquishments abovementioned, which are herewith exhibited, marked 1, 2, 3, 4, M, N, ——— and which your orator prays may be taken as part of this bill of complaint, the said agents and attornies of the said ——— President and Directors ——— were about to procure grants of said lands, or of rights of way over them, from said grantors, in conformity to their above exhibited agreements, by deeds duly acknowledged for record, or to institute the necessary proceedings to enforce the specific performance of such agreements, where such grant were refused, and would have procured such grants, or have instituted such proceedings.

But now so it is, may it please your Honor, that after all the abovementioned acts had been done by the said Baltimore and Ohio Rail Road Company, after the abovementioned actual location of said road had been made, and the abovementioned contracts or agreements with your orator, made, or entered into, upon an application to Washington County Court, as a Court of Equity, made in the name and on the behalf of the Chesapeake and Ohio Canal Company and Potomac Company, by bill of complaint, praying a writ of injunction against your orator, its attornies, agents, and all persons whatsoever, acting under its authority, or on its behalf, to prevent them from obtaining a title by purchase, deed or condemnation, or otherwise, to any of the lands lying within the actual locations aforesaid, or to a right of way over them, and otherwise to restrain the lawful acts and proceedings of your orator, an injunction, as prayed for, was accordingly issued ; all of which will more fully appear from a copy of the said bill of complaint, marked M, N, and the said writ of injunction, marked L, C, which are herewith exhibited, and which your orator prays may be taken as part of this bill of complaint.

Your orator is advised and believes, that neither the said Potomac, nor the said Chesapeake and Ohio Canal Companies, have any such unquestionable and absolute right of election or pre-emption for the route or site of said canals, or to all or any of the lands lying within the aforementioned actual locations of the said Baltimore and Ohio Rail Road, as is set forth in the said bill of complaint ; that, as your orator is credibly informed and believes, neither of the said Companies had obtained, at the time of issuing the said injunction, any title or right, by location, purchase, deed, condemnation, or otherwise, to the exclusive use and possession of any of said lands ; that the Poto-

mac Company has been organized for more than forty years, and during all that period has not exercised any franchise or right of election, as to said lands, which it may have derived under its charter, so as to vest in it an exclusive title to the same, or to any part of them ; and that at the time when all the abovementioned locations and agreements were made, the said Chesapeake and Ohio Canal Company *was not*, and never had been, sufficiently organized, so as *to be competent, under its charter, to do such acts*, make such contracts, or *accept such gifts and relinquishments*, as were and are necessary to vest in the said Company, any pre-emption, election, or exclusive right to any of the lands lying within the aforesaid actual locations; although, as your orator has reason to believe, from the allegations of said bill of complaint of said Company, and from other information from credible persons, and verily does believe, the said Chesapeake and Ohio Canal Company is now sufficiently organized for said purposes, by the election of a President and Directors.

And your orator further alleges, that it has good reason to believe, and verily does believe, that whilst the said Chesapeake and Ohio Canal, and Potomac Canal Companies, were professing, in their said bill of complaint, an entire reliance upon their pretended priority and right of election, as set forth in said bill, unaccompanied and unfortified by any location, purchase, condemnation, or other act on their part necessary to secure and vest in them such alleged priority and right of election, it was the principal, if not the sole object, of the said companies, and their confederates, in obtaining said injunction, to obstruct and prevent your orator from enjoying the benefit of the abovementioned agreements and relinquishments, and from perfecting the same by deed or conveyance, so as to vest in your orator a complete legal title to the lands to which said agreements or relinquishments relate, or to a right of way over them, until the said Chesapeake and Ohio Canal Company was properly organized, and prepared to appoint, and might appoint agents, adopt rules, make, or cause to be made, locations and contracts, and do and assent to all other acts which might be necessary or proper to vest in the said Chesapeake and Ohio Canal Company, a title to the very lands for which, or a right of way over which, the above agreements have been entered into with your orator ; and your orator has also good reason to believe, and verily does believe, that it was the intent and design of the said companies, and their confederates, in applying for and obtaining said injunction, to set up their pretended priority for the purpose of restraining your orator from enjoying the benefit of the above agreements, and from acquiring a title to the lands affected by the same, until the said Chesapeake and Ohio Canal Company was competent and prepared to acquire, and could acquire, a title to the said lands, in the very mode in which your orator was about to obtain, and would have obtained a title to the same, but for the interposition of the abovementioned injunction, and might thus be enabled, if their priority and right of election set forth and relied upon in their said bill of complaint, should fail them, to resort to a title acquired by purchase, deed, or

condemnation, and acquired only by fraudulently restraining your orator, from availing itself of the equitable title which it derives under said agreements ; and, as further evidence of such intention and design, your orator alleges, that it has been credibly informed, and verily believes, that since the said locations and agreements have been made, and the said injunction obtained, and before, attempts have been made by one or more agents of the persons professing to act under the authority of the said Companies, and on their behalf, or for their benefit, to dissuade and prevent parties to the said agreements from performing their said contracts, and to procure from them deeds for, or written agreements to convey, the very lands affected by such agreements, or lying within the actual locations as aforesaid ; and that one or more such deed or agreement, has actually been obtained by a certain Clement Cox, or under his directions, as the agent, or professing to act for said Companies ; from all which, and many other actings and doings of the said Companies, or their attornies, solicitors, and agents, to obstruct and hinder your orator in the enjoyment of his rights, your orator has reason to believe, and verily believes, that the said Companies, or their agents, combining and confederating for the wrongful purpose aforesaid, will endeavor to procure, and are endeavoring to procure, deeds for the said lands, from the very parties to the said agreements, and in violation of the said agreements, or to value and condemn them, or have them valued and condemned, for the use of the Chesapeake and Ohio Canal Company, so as to hold them free, if possible, from any equitable interest in the same which your orator may have acquired under said agreements ; and, if not prevented, will procure, or value and condemn them for their own use, and will endeavor to obtain, and will obtain, possession of the very lands affected by such agreements, and will prevent your orator from taking possession of the same, and will otherwise obstruct and hinder your orator in exercising its rights under said agreements over the same. And your orator further sheweth, that having a due respect for, and, in all respects, obeying the said injunction issued out of Washington County Court, it will during the continuance of said injunction, be restrained from doing any act whatsoever, to protect the titles which it derives under said agreements, or against said Companies, and will during that period, be left unprotected against the unjust and unequitable attempts of the said Chesapeake and Ohio Canal and Potomac Companies, to take advantage of their own wrong by procuring titles by purchase, location, or condemnation, so as to give a priority which they could not have obtained but for the said injunction ; that the said injunction has been issued solely to protect an alleged priority, or right of election, in the said Chesapeake and Ohio Canal and Potomac Companies, as set forth in their bill, and not requiring any acts on the part of said Companies, such as location, purchase, or condemnation, to vest or originate the same, and as the said Companies, in their said bill of complaint, allege, only in order to a speedy determination as to the existence of such priority or right ; and that the purposes and objects of such injunction can

be accomplished, and full justice done to your orator and to the said Companies in the premises, only by restraining the said Chesapeake and Ohio Canal and Potomac Companies, from doing any act or acts whatsoever, to deprive your orator of the benefit of said agreements, until the question of priority of right, as claimed by said Companies, shall have been determined upon their said bill of complaint : so that if said question should be determined against the said Companies, upon their said bill, your orator may be remitted to all the rights which it possessed or enjoyed at the time of such injunction obtained, unaffected by any wrongful acts in prejudice of the same, which the said Companies may have done under color of said injunction, and in perversion or abuse of its objects ; that then all the alleged rights and priority of the said Companies will be saved and reserved to them from their alleged nature, and by the aid of the abovementioned injunction to which your orator is ready to pay all due respect, and all the equities of your orator will also be saved and reserved to it, so that, in the event of a decision, in its favor, or upon the bill of complaint of the said companies, it will be remitted to the full enjoyment of them.

Wherefore, and forasmuch as without restriction imposed upon the said Chesapeake and Ohio Canal and Potomac companies and their agents, your orator may be thus unjustly deprived of or injured in the possession of its said equitable rights, and may thus suffer an injury which cannot be repaired by any decision in its favor upon the bill of complaint of the said Companies ; and forasmuch as a Court of Equity can alone give relief in the premises, and this Honorable Court having full jurisdiction coextensive with the limits of the State, can alone give that speedy and extensive and efficient relief which the nature and urgency of the case requires : To the end therefore, that the said Chesapeake and Ohio Canal Company and the said Potomac Company, being Companies incorporated and organized under acts of the Legislature of Maryland, may, under their respective and corporate seals, full, true and perfect answer make to all the matters hereinbefore set forth, and that in the meantime the said Chesapeake and Ohio Canal Company and Potomac Company, their agents or attornies, and the agents or attornies of either of them, and all persons acting or professing to act under their authority or on their behalf, or on behalf of either of them, may be strictly prohibited and enjoined from making any contracts or agreements with, or receiving or obtaining any deed or conveyance from any of the abovementioned party, grantors in the above exhibited agreements or relinquishments, for any of the lands of the said party, grantors, lying within the limits of the abovementioned actual locations of said Rail Road, or for a right of way over the same, and from anywise obstructing or preventing your orator from taking possession of said lands, under and in conformity to said agreements ; and that the said Chesapeake and Ohio Canal and Potomac Companies, their agents or attornies, or the agents or attornies of either of them, and all persons professing to act under their authority, or on their behalf, may be strictly prohibited and enjoined, either from issuing or causing to

be issued, or executing or causing to be executed, any warrants for summoning any Jury or Juries, to assess damages for the condemnation of the lands of the above grantors lying within the said actual locations of said Rail Road, as hereinbefore set forth ; and that all Justices of the Peace and Sheriffs of the Counties of Frederick, Washington and Alleghany, may be strictly prohibited and enjoined, the one from issuing and the other from executing any such warrant or warrants, to value and condemn any of said lands, until the right of priority and election of the said Chesapeake and Ohio Canal and Potomac Companies, as set forth and claimed in the said Bill of Complaint, shall have been fully acted upon and determined, or until the further order of this Honorable Court.

Your orator therefore prays your Honor, that the said Chesapeake and Ohio Canal Company, and the said Potomac Company, may be made defendants to this bill, and that your Honor will grant unto your orator, the State's writ of subpœna, directed to the said Defendants, and requiring them to come in and answer the premises under their respective corporate seals ; and that your Honor will also grant unto your orator the States' writ of injunction, directed to the said Chesapeake and Ohio Canal Company and the Potomac Company, their agents and attornies, or the agents or attornies of either of them, and all persons acting under their authority or on their behalf, or under the authority or on the behalf of either of them, and to the several Sheriffs and Justices of the Peace, in and for Frederick, Washington and Alleghany counties, strictly enjoining and prohibiting the said Companies or either of them ; and the said agents, attornies or persons, acting or professing to act under the authority, or on the behalf of said Companies, or of either of them, from making any contract or agreement with, or receiving or obtaining any deed or conveyance whatsoever, from George Snouffer, Patrick D. M'Gill and Mary his wife, James Hook, Peter Miller, Philip Grove, Peter Beeler, David Beeler, Samuel Beeler, Eleanor Beeler, Sarah M'Minn and Charles M'Minn, Margaret Souder and Daniel Souder, Mary Beeler, Susannah Beeler, Peter Beeler, David Halen, John D. Grove, Grafton Duvall, Lloyd Luckett, Lingan Boteler, Thomas Conn, Patrick O'Bryone, John Blackford, Adam Myers, George Cronise, Elizabeth Cronise, Mathias Strong, Recamah Stevens, Peter Palmer, John Booth, Samuel M. Hitt, Peter Miller, Emeline V. Corbaley, Henry Clagett, James B. Wager, Gerard Wager, Catharine Wager, Anthony Snyder, Jacob T. Towson, Frederick Dellinger, George Snider, Watkins James, Henry Dellinger, Michael Smith, Joseph Smith, Jacob Barkman, Joseph Charles, junior, Joseph Charles, senior, Nicholas Lowe, Henry Wells, Alexander Moore, Sarah Jacques, James H. Bowles, John Johnson, Paul Summers, George Harvie, Daniel Rieley, John O'Ferrall, Jacob Martin, James King, William Hughes, Ludwick Rodene, William Golding, Stephen Fouty, Walter M'Attee and Nathan Tracy, or any of them, for any land or lands, or any interest in any land or lands, by them or any of them owned or possessed, and lying within the limits of the

actual locations of the Baltimore and Ohio Rail Road, as surveyed and marked out by the engineers of the Baltimore and Ohio Rail Road Company, under the direction of the President and Directors of said Company, before the tenth day of June, eighteen hundred and twenty-eight, for the route and site of said Rail Road; and also from hindering or obstructing your orator, or its agents from taking possession of any of said lands, under their said agreements, or using them in conformity to said agreements; and also strictly enjoining and prohibiting the said Companies, their agents and attorneys as aforesaid, from applying for or causing to be issued or executed, any warrant or warrants for summoning any jury or juries, to assess damages for the condemnation of any of the said lands for the use of said Companies, or either of them, for the route and site of said canal or canals; and also the said Justices of the Peace and Sheriffs, the one from issuing, and the other from executing any such warrant or warrants, to summon any jury or juries, to value and condemn any of the said lands for the use of the said Chesapeake and Ohio Canal and Potomac Companies, until the claim of the said Chesapeake and Ohio Canal and Potomac Companies, to a priority and right of election as to all the lands lying within the actual locations as aforesaid of the Baltimore and Ohio Rail Road, as set forth and relied upon in their bill of complaint, filed against your orator in Washington County Court, as a Court of Equity, on the tenth day of the instant month, shall have been finally heard and determined upon, or until the further order of this Honorable Court, and that your Honor will grant unto your orator such other and further relief as your Honor may deem proper, or the equity of the case demands. And your orator, &c.

R. B. TANEY,
WILLIAM GWYNN,
J. H. B. LATROBE,
JOHN V. L. McMAHON,
Solicitors for Compts.

Maryland: Anne Arundel County, to wit:

BE IT REMEMBERED, That on this 23d day of June, in the year of our Lord one thousand eight hundred and twenty-eight, personally appeared before me the subscriber, a Justice of the Peace, in and for Anne Arundel county aforesaid, John V. L. McMahon, and made oath on the Holy Evangelists of Almighty God, that he knows, or is credibly informed, and very believes, that the matters and things set forth in the above bill of complaint, are just and true as stated, to the best of his knowledge and belief.

Sworn to before me,

JOS. HOLLAND.

IN CHANCERY, 23d June, 1828.

Ordered, That writs of subpoena and injunction, issue as prayed by the foregoing bill of complaint. And it is further ordered, that at

any time after the filing of the answers of the said defendants, the Court will hear the motion to dissolve the said injunction : *Provided*, The said defendants give to the said plaintiff ten days notice thereof. And the Register is directed to endorse a copy of this order on the writ of injunction, that it may be served therewith on the said defendants.

THEODERICK BLAND, Ch'r.

True copy : Test,

RAMSAY WATERS, *Reg. Cur. Can.*

BILL No. 2.

To the Honorable Theodorick Bland, Chancellor of Maryland.

This, the bill of complaint of the Baltimore and Ohio Rail-road Company, respectfully sheweth : That your orators were duly incorporated and organized under an act of the General Assembly of Maryland, entitled, "an act to incorporate the Baltimore and Ohio Rail-road Company," passed at December session, 1826 ; and that being by said act invested with the powers necessary to the construction of a rail-road, from the city of Baltimore to the Ohio river, the President and Directors of said Company proceeded, in exercise of the powers conferred upon them by the said act, to cause reconnoissances and surveys of the various routes for said road to be made, with a view to its actual location and speedy construction ; that in May last, upon the report of the engineers employed to make such surveys, &c. the said President and Directors adopted, as the route for said road from Baltimore to the town of Cumberland, what was designated by said engineers as the Southern route, to wit : from the city of Baltimore by the valley of the Patapsco, and thence to the Potomac river, striking the Potomac at the Point of Rocks at the North-eastern side of the gap at which the Potomac passes through the Catoctin mountain, and thence with the valley of the said river, with some deviations, to Williamsport and Cumberland. That the route for said road being definitively ascertained by said report, the subscriptions obtained deemed amply sufficient for its completion to Cumberland, and the day fixed for the commencement of the construction of said road, the said President and Directors deputed engineers to pass along the said route, and wherever the character of the ground was such as to leave but little choice as to the location of said road, or to present but one passage, to make, at once, an actual location of said road over the same, designating it by well defined boundaries, so that said location might serve as regulating points for the intermediate sections, and might secure the passage of the road ; and also, agents and attornies to procure for your orators a title to all the lands included in said actual locations, as to a right of way over them for said road. That the said engineers proceeded to make

and did make, an actual location of said road over such portions of the route from the Point of Rocks aforesaid, to the town of Cumberland, actually surveying and marking out with boundaries the site of said road, particular descriptions of most of which said locations are contained in certain specifications, exhibited with a bill of complaint of your orators, against the Chesapeake and Ohio Canal and the Potomac Companies, filed in this Honorable Court, on the 23d day of June inst., and marked with the letters from A to Bb, inclusive, to which your orators beg leave to refer, as part of this bill. Your orators further show, that they have obtained a title to the lands included in said locations, or to a right of way over them where it was practicable, but where they were unable to agree with the owner or owners, or from other causes, it became necessary, they, by their said attorneys, caused warrants to be issued, to value and condemn such lands for their use, agreeably to the directions of the fifteenth section of their act of incorporation above mentioned. That accordingly, several warrants were issued to value the lands of John M'Pherson, John Brien, the representatives of John Jones Hays, Joseph Beeler, Catherine Maybury, Margaret Snyder and John Stevens, which said warrants are herewith exhibited, marked A, B, C, D, E, F, G, H, I, and which your orators pray may be taken as part of this bill of complaint. That actual locations of said road, surveying and actually defining the site of the same, were made over the following lands, to wit, over certain lands lying and being in Washington county, Maryland, and in part owned by Sophia Otho and Josiah Smith, who are minors, and Michael Barkman and his wife, who are non-residents of the State, which said location is particularly described in exhibit R, specification third, of the specifications above referred to; also, over certain lands being in said county, and owned by the widow and heirs of the late John Oliver, the said heirs being minors, and the said agents unable to agree with said widow for the purchase of the same, which said location is particularly described in exhibit R, specification twelfth of said specifications; also, over certain lands being in said county, and owned by Samuel Ridout, who then was and is a non-resident as to said county, the said location being particularly described in the specification marked U, V, and W, above referred to; also, over certain lands being in Alleghany county, Maryland, and owned by a certain Henry Fauver, who then was, and still is, a non-resident, both as to said county and said State, which said location is particularly described in specification X, of the specifications above referred to; also, over certain lands being in Alleghany county aforesaid, and owned by the widow and heirs of Van Zindla, who were and are non-residents of said county and State, which said location is particularly described in specification Aa, of said specifications; also over certain lands being in Alleghany county aforesaid, and owned by a certain John Mitchell, who did not then, and does not now, reside within the State of Maryland, which said location is particularly described in specification Bb, of said specifications. Your orators also show, that the

above-mentioned locations, include all the lands of the aforesaid persons, lying and being within the limits of the actual locations of said Baltimore and Ohio Rail-road, made as aforesaid, and herewith exhibited; that the said warrants were issued, and the said locations made in conformity to the directions of the said act incorporating your orators, and in strict pursuance of the powers conferred by the same; and that they were issued or made by your orators, with a view to the accomplishment of the objects for which your orators were incorporated, in the best possible manner, in due order, and as necessary to be done to give your orators the full benefit of the aforementioned Southern route, and not with any intent or design merely to impede or obstruct the Chesapeake and Ohio Canal Company and the Potomac Company, hereinafter mentioned, in exercising any powers vested in them by their respective acts of incorporation; that all the said warrants were issued with a bona fide design to perfect the incipient title under the same, by condemnation according to their tenor; and that all the abovementioned locations were made actually to determine the site of said road, and in order to the speedy exercise by your orators of their power to purchase or condemn the lands lying within said actual locations, and that the titles thus commenced would have been perfected by condemnation or otherwise, as your orators are informed by their agents, and verily believe, so as to exclude any title to the same, which the said Companies or either of them could possibly acquire by mere location and purchase, or condemnation, but for the injunction hereinafter mentioned. *But now so it is, may it please your Honor*, that after all the abovementioned acts had been done by or under the direction of the said President and Directors of the Baltimore and Ohio Rail Road Company; after the abovementioned warrants had been issued, and the abovementioned actual locations of said road had been made, upon an application to Washington County Court, as a Court of Equity, made in the name and on the behalf of the Chesapeake and Ohio Canal Company and Potomac Company, by bill of Complaint praying a writ of injunction against your orators, its attornies, agents, and all persons whatsoever, acting under its authority, or on its behalf, to prevent them from obtaining a title by purchase, deed, condemnation or otherwise, to any of the lands lying within the actual locations aforesaid, or to a right of way over them, and otherwise to restrain the lawful acts and proceedings of your orators, an injunction as prayed for, was accordingly issued; all of which, will more fully appear from a copy of the said bill of complaint, marked M M, and of said writ of injunction marked L L, exhibited with a bill of complaint of your orators against the Chesapeake and Ohio Canal Company and Potomac Company, filed in this Honorable Court on the twenty-third day of the present month, to which your orators beg leave to refer as part of this bill of complaint. Your orators are advised and believe, that neither the said Potomac Company, nor the said Chesapeake and Ohio Canal Company, have any such unquestionable and absolute right of pre-emption and election for the route or site of said canals, as to all or

any of the lands lying within the aforementioned actual locations of said rail road, as is set forth in said bill of complaint; that as your orators are credibly informed, and verily believe, neither of the said Companies had obtained, at the time of issuing the said injunction, any title or right by location, deed, purchase, condemnation or otherwise, to the exclusive use and possession of any of said lands; that the Potomac Company has been organized for more than forty years, and during all that period has not exercised any franchise or right of election as to said lands, which it may have derived under its charter, so as to vest in it an exclusive title to the same or to any part of them; and that at the time when all the abovementioned locations and agreements were made, the said Chesapeake and Ohio Canal Company was not, and never had been sufficiently organized, so as to be competent under its charter, to do such acts, make such contracts, or accept such gifts, grants and relinquishments, as were and are necessary to vest in said Company any pre-emption, election, or exclusive right to any of the lands lying within the aforesaid actual locations, although as your orators have reason to believe, from the allegations of said bill of complaint of said Company, and for other information from credible persons, the said Chesapeake and Ohio Canal Company is now sufficiently organized for such purposes, by the election of a President and Directors. And your orators further allege, that they have good reason to believe, and verily do believe, that whilst the said Chesapeake and Ohio Canal and Potomac Companies were professing in their said bill of complaint an entire reliance upon their pretended priority and right of election, as set forth in their said bill, unfortified by any location, purchase, condemnation or other act on their part, as necessary to vest in them, and secure to them, such alleged priority and right of election, it was the principal, if not the sole design of the said Companies and their confederates, in obtaining the said injunction, to obstruct and prevent your orators from enjoying the benefit of the abovementioned purchases, warrants, and locations, and from perfecting their incipient titles under these, to the lands included in said locations, or to a right of way over them, until the said Chesapeake and Ohio Canal Company was properly organized, and was capable of doing or assenting to all acts which might be necessary or proper to vest in the said Chesapeake and Ohio Canal Company, a title to the very lands affected by such warrants or locations, or to a right of way over them. And your orators have good reason to believe, and verily do believe, that it was the intent and design of the said Companies and their confederates, in applying for, and obtaining said injunction, to set up their pretended priority for the purpose of restraining your orators from enjoying the benefit of the abovementioned warrants, locations, and purchases, until said Chesapeake and Ohio Canal Company was competent to acquire, and could acquire, a title to said lands, in the very mode in which your orators were about to obtain it, and would have obtained it, but for the abovementioned injunction; and might thus, if their alleged priority should fail them, resort to a title acquired by location and pur-

chase, or condemnation, and acquired only by fraudulently depriving your orators of the priority they had obtained by said purchases, warrants, and locations, at the time when said injunction was issued; that if any such priority existed as to the said Companies, any proceeding by injunction to restrain your orators was wholly unnecessary to preserve and have such priority, and can only be referred to the intent and design abovementioned; and as further evidence, your orators allege, that they have been credibly informed, and verily believe, that since the said locations and purchases have been made, and the said injunction obtained, and before attempts have been made by one or more agents of the said Chesapeake and Ohio Canal and Potomac Companies, or persons professing to act under their authority, or on their behalf, and for their benefit, to obtain titles to the very lands lying within said actual locations, and to procure from persons owning lands within said locations, a title to the same, or a right of way over them; and that one or more such deeds has been obtained by a certain Clement Cox, or under his directions, as the agent of said Company; from all which actings and doings of the said Companies and their agents, your orators have reason to believe, and do believe, that the said Companies and their agents, combining for the wrongful purposes aforesaid, will endeavour to deprive your orators of all the benefits of said purchases, warrants and locations, and will purchase or have the said lands valued and condemned for the use of the said Chesapeake and Ohio Canal Company, and will endeavour to obtain, and will obtain possession of the said lands, and will prevent your orators from taking possession of the same, and will otherwise hinder or obstruct your orators in the exercise of the rights they have obtained under said warrants and locations.

Your orators further show, that under their act of incorporation abovementioned, the location of the said Rail-Road as they are advised, is a previous act necessary on the part of your orators, to ascertain the site of said road, and to determine what land will be wanted for its construction, and is therefore necessary to vest in your orators the right to purchase or condemn lands, under the fifteenth section of said act, and that the said locations therefore constitute the inception of a title to the lands included within them, for the purpose of constructing said Rail Road; that where the abovementioned locations have been made over lands which have not been purchased, and to condemn which no warrants were actually issued, before said injunction was issued, warrants were prepared, or would have been prepared and issued, as your orators are informed by their agents, and verily believe in all of said cases, before the twentieth day of the present month, so that before the said Chesapeake and Ohio Canal Company could have been organized, and competent to make locations, purchases, and condemnations, and before the said Potomac Company, if it yet has any such rights, could have exercised similar powers as to said lands; your orators would have acquired a complete title to the lands included in the aforesaid locations, by condemnation, or an unquestionable incipient title to the same, by the issuing of warrants, to

value them for their use, under their aforesaid act of incorporation, but for the issuing of the injunction aforesaid; which, as your orators allege, was designed to defeat the priority thus acquired.

Your orators further show, that having a due respect for, and in all respects obeying the said injunction issued out of Washington County Court, they will, by the said injunction, be deprived of all the benefits of said locations and warrants, during its pendency, and will, in some instance, but for the interposition of this Court, be unable to regain the priority which they had thus acquired, and which they enjoyed when said injunction was obtained, that the abovementioned warrants were all necessarily made returnable at a day which is now past, and occurring after the issuing of said injunction, by the operation of which, your orators were prevented from having the same executed, in conformity to the directions of the fifteenth section of the act incorporating your orators; and that the said warrants cannot now, because of the effect of the injunction, ever be executed in conformity to the directions of the said act; and your orators have thus been deprived of all the priority obtained by the issuing of them, as they have reason to fear, and that during the continuance of said injunction, your orators will be left open to, and unprotected against the unjust and inequitable attempts of the said Companies and their agents, to take advantage of their own wrong by procuring titles, by purchase, location, and condemnation, so as to give them a priority which they could not have obtained but for said injunction; that the said injunction has been issued solely upon the allegation of a priority, or right of election in the said Chesapeake and Ohio Canal and Potomac Companies, as set forth in their said bill of complaint, and not requiring any act on the part of said Companies, such as location and purchase, or condemnation to vest or originate the same; and, as the said Companies in their said bill of complaint allege, only in order to a speedy determination as to the exercise of such priority of right; and that the purposes and objects of such injunction can be accomplished, and full justice done to your orators and to the said Companies in the premises, only by restraining the said Chesapeake and Ohio Canal and Potomac Companies from doing any act or acts whatsoever, to deprive your orators of the priority they had acquired by said locations, and the issuing of said warrants, until the claim of right set up by the said Companies, shall have been finally determined upon, so that if said claim should not be sustained, your orators may be remitted to all the rights which they possessed, or enjoyed at the time of said injunction obtained, unaffected by any wrongful acts in prejudice of the same, which the said Companies, or either of them may have done under color of said injunction, and in perversion or abuse of its objects; that if not thus restrained, the benefits of said warrants and locations will be lost to your orators, or your orators driven to remedial proceedings in Chancery to regain the same, whilst by the preventive proceeding by injunction, all the alleged rights and priority of the said Companies, will, from their very nature, and by the aid of the abovementioned injunction, to which your orators are

ready to pay all due respect, be saved and reserved to them ; and at the same time, all the priorities of your orators acquired by said warrants and locations, will also be preserved and protected against any intermediate wrongful acts on the part of said Companies, so that in the event of a decision in favor of your orators, upon the bill of complaint, of the said Companies, your orators will be remitted to the full enjoyment of them as they existed when said injunction was obtained.

Wherefore, and forasmuch, as without such restriction imposed upon the said Chesapeake and Ohio Canal and Potomac Companies, and their agents, &c. your orators may be unjustly deprived of the priorities as to said lands which they had acquired, or were about to acquire, and would have acquired, but for said injunction, and may thus suffer an injury which cannot be repaid by any decision in their favor upon the bill of complaint of the said Companies, and forasmuch as a court of equity can alone give relief in the premises, and this Honorable Court having full jurisdiction, co-extensive with the limits of the State, can alone give that speedy, extensive, and efficient relief which the nature and urgency of the case require. *To the end therefore*, that the said Chesapeake and Ohio Canal Company and Potomac Company, being Companies incorporated and organized under acts of the Legislature of Maryland, may full, true and perfect answer make to all the matters and things set forth in the above bill of complaint ; and that the said Chesapeake and Ohio Canal Company, the said Potomac Company, their agents or attornies, or the agents and attornies of either of them, and all persons acting, or professing to act under their authority, or on their behalf, or under the authority, or on the behalf of either of them, may be strictly prohibited and enjoined from making any contract or agreement with, or receiving any deed or conveyance from any of the above named owners of said lands, for said lands, or any interest whatever of the said persons in the same ; and from causing to be issued or executed, any warrant or warrants, to summon any jury or juries to value the same for the use of the said Companies, or of either of them ; and from preventing your orators from taking possession of the same, and also that the several Sheriffs and Justices of the Peace, in and for Frederick, Washington, and Alleghany counties, may be strictly prohibited and enjoined, the latter from issuing, and the former from executing any such warrant or warrants, for any of the said lands ; your orators pray your Honor, that the said Chesapeake and Ohio Canal Company, and the said Potomac Company, may be made defendants to this bill, and that your Honor will grant unto your orators the State's writ of subpœna directed to the said defendants, and requiring them to come in and answer the premises under their respective corporate seals ; and that your Honor will also grant unto your orators the State's writ of injunction, directed to the said Chesapeake and Ohio Canal Company, the said Potomac Company, their agents and attornies, and the agents and attornies of each of them, and to all persons acting, or professing to act under the authority or on the be-

half of said Companies, or of either of them, strictly enjoining and prohibiting the said Companies, the said agents, attornies, and persons acting, or professing to act under the authority or on the behalf of them, or either of them, from making any contract or agreement with, or receiving any deed or conveyance from John M. Pherson, John Brien, the representatives of John Jones Hays, Joseph Beeler, Catharine Maybury, Margaret Snyder, John Stevens, Sophia Smith, Otho Smith, Josiah Smith, Michael Barkman and his wife, the widow or children and heirs at law of the late John Oliver, of Hancock, Samuel Ridout, Henry Fawver, the widow or heirs at law of Van Zandt, and John Mitchell, for any lands or any interest in lands owned or possessed by them, and lying within the limits of the actual location of the Baltimore and Ohio Rail-Road, as marked out and surveyed for the route and site of said road, by the engineers of said Baltimore and Ohio Rail-Road Company, under the direction of the President and Directors thereof, before the 10th day of June, 1828, and herewith exhibited; and also from causing to be issued or executed, any warrant or warrants, to summon any jury or juries, to value the same for the use of said Companies, or of either of them, and from obstructing or preventing your orators from taking possession of the same; and also the said Justices and Sheriffs, the former from issuing, and the latter from executing any warrant or warrants as aforesaid, until the claim of the said Chesapeake and Ohio Canal and Potomac Companies, to a priority and right of election to all said lands, as set forth in the bill of complaint, filed against your orators, in Washington County Court as a court of equity, on the tenth day of the present month, shall have been finally heard and determined, or until the further order of this Honorable Court; and that your Honor will grant unto your orators such other and further relief, as the equity of their case may require.

R. B. TANEY,
WILLIAM GWYNN.
J. H. B. LATROBE,
JOHN V. L. McMAHON,
Solicitors for Compt.

Maryland: Anne Arundel County, to wit:

BE IT REMEMBERED, That on this 24th day of June, in the year of our Lord, one thousand eight hundred and twenty-eight, personally appeared before me, the subscriber, a Justice of the Peace in and for said county, John V. L. McMahon, and made oath on the Holy Evangelists of Almighty God, that he knows, or is credibly informed, and verily believes, that the matters and things set forth in the above bill of complaint, are just and true as stated, to the best of his knowledge.

Sworn to before me,

JOS. HOLLAND.

IN CHANCERY, 24th June, 1828.

Ordered, That writs of subpœna and injunction, issue as prayed by the foregoing bill of complaint. And it is further ordered, that at any time after the said defendants have filed their answers, the Court will hear a motion to dissolve the said injunction: *Provided*, the said defendants give to the said plaintiffs ten days' notice thereof. And the Register is directed to endorse a copy of this order on the said writ of injunction, that it may be served therewith on the said defendants.

THEODORICK BLAND, *Chancellor*.

True copy : Test,

RAMSAY WATERS, *Reg. Cur. Can.*

BILL No. 3.

To the Honorable THEODORICK BLAND, Chancellor of Maryland.

THIS the Bill of Complaint of the Baltimore and Ohio Rail Road Company, respectfully sheweth : That your orators were duly incorporated and organized under an Act of the General Assembly of Maryland, entitled an Act to incorporate the Baltimore and Ohio Rail Road Company, passed at December session, eighteen hundred and twenty-six, and clothed with all the powers necessary to the construction of a Rail Road from the city of Baltimore, to the Ohio River ; and that in exercise of the powers conferred by said act, the President and Directors of said Company, caused reconnoissances and surveys of the various routes for said road, to be made by the engineers of said Company, who by their report in May last, recommended the adoption of the Southern route, to wit, from Baltimore by the Patapsco valley to the Potomac River, striking the said river at the Point of Rocks, and thence, with the valley of the Potomac with inconsiderable deviations, to Williamsport and Cumberland ; that the said route being thus adopted, and the day for the commencement of the work being assigned, the said President and Directors deputed engineers to go along said route, who were by them instructed, wherever the character of the ground was such as to leave but little choice as to the location of said road, or to present but one passage for it, to make at once an actual location of said road over the same, designating it by well defined boundaries ; and the said President and Directors also deputed agents to procure a title to the lands included in said actual locations, or to a right of way over them, that in pursuance of this authority, the said engineers made actual locations over such portions of the said route, from the Point of Rocks to the town of Cumberland ; that a title to the lands, included in said actual locations, or to a right of way over them for said road, was obtained in many instances ; that warrants to summon juries to value the same, for the use of your orators, were issued in others ; and that the follow-

ing actual locations of said road, were made over certain other lands, with a view to their purchase or condemnation, for the use of your orators, to wit: over certain lands lying and being in Alleghany county, and owned by a certain John Mitchell, who then was, and still is not a resident of the State of Maryland, which said locations, are particularly described, in the specifications herewith exhibited, marked A, B, C, D,—also, over certain lands, being in said county, and owned by the children and heirs at law, of the late Jacob Fouty, several of whom are minors, and the residue of whom, the agents of your orators, were unable to agree with, for the purchase of said lands, which said locations are particularly described, in the specifications herewith exhibited, marked E and F; also over certain lands lying and being in said county, and owned by the widow and heirs at law of the late John O'Neill, who then did not and still do not reside in Alleghany county; which said location, is particularly described, in the specification herewith exhibited, marked C, also over certain lands, being in the county aforesaid, and owned by Simon Taylor, Michael C. Sprigg and Luther Martin Cresap, and Mary Cresap, of whom, Luther Martin Cresap, owner of part of the lands included in said locations, is a minor, and Mary Cresap has executed a deed to your orators, for her interest in the same, which said location is particularly described in the specifications herewith exhibited, marked H; also over certain lands, being in said county, owned by the Cumberland Bank, of Alleghany, the title to the same, being vested in commissioners, a majority of whom, (who alone are competent to grant a title to the same) reside out of said county, which said location is particularly described in specification J, herewith exhibited; all of which said specifications your orators pray, may be taken as part of this bill: your orators further shew, that all the said locations were made in pursuance of the powers conferred upon them by their Charter, with a view to the accomplishment of the object of their incorporation, in the best possible design, and to the speedy commencement and construction of said road upon the same, and not with the mere design of impeding or embarrassing the operation of any other Company, and that all the said locations have been adopted and confirmed by the said President and Directors; and that the said actual locations, together with the location over the lands of John Mitchell, exhibited with the bill of complaint of your orators against the Chesapeake and Ohio Canal and Potomac Companies, filed in this honorable Court, on the twenty third day of June instant, included all the lands owned by any of the said parties, and lying and being within the actual locations of said Rail Road, and from the Point of Rocks aforesaid, to the town of Cumberland.

But now, so it is, may it please your Honor, that after the above proceedings had taken place, and the above specified actual locations were made, upon an application to Washington County Court, as a Court of Equity, praying an injunction to restrain your orators from obtaining a title to any of the lands included in said actual locations, by purchase or condemnation, by or on behalf of the Chesapeake and

Ohio Canal and Potomac Companies, the said injunction as prayed for, was accordingly issued ; as will more fully appear, from a copy of the said bill of complaint of the said companies, and of the injunction issued thereon, which are exhibited by your orators in a bill of complaint by your orators, against the said Companies, filed in this Honorable Court, on the 23d day of June instant, to which your orators beg leave to refer, as part of this bill of Complaint.

Your orators further shew, as they are advised, and believe, neither of the said Companies have, or are entitled to, any such priority or right of election as to all the lands included in said actual locations, as is set forth and relied upon in their said bill of complaint ; that the Potomac Company has been incorporated for more than forty years, and that during all that period, the said Company has not exercised any franchise, which it may have derived under its charter, as to any of said lands, as your orators are informed, and verily believe, that when the said locations were made, the said Chesapeake and Ohio Canal Company was not sufficiently organized, so as to be competent under its charter, to do any acts which were and are necessary, to vest in it said priority and right of election, although the said Company is now sufficiently organized for said purpose, by the election of a President and Directors ; that your orators have reason to believe, and verily believe, the principal if not the sole design of the said Companies, was to deprive your orators of all the right which they had acquired by purchase, and of the priorities obtained by location or warrants, to value and condemn, and to restrain your orators in the exercise of them, until the said Chesapeake and Ohio Canal Company was sufficiently organized, to be competent to acquire a title to the lands included in said locations, by location and purchase, or condemnation, and might thus be enabled, by depriving your orators of said priority by the said injunction, or suspending the enjoyment of it, to acquire in the mean time titles to the said lands, based upon purchases or condemnation by the said Company, if their claim of priority as to said lands, set forth in their said bill of complaint, should ultimately be determined against them ; that the said proceeding by injunction was not necessary to protect any such claim of priority, as that set forth by the said Companies in their said bill of complaint ; and that the intention and design, above imputed to the said Companies and their agents, is still further evidenced by the fact, that both before and since the said injunction has been obtained, one or more agents of the said Companies, or persons professing to act on their behalf, have been actively engaged, as your orators are informed, and verily believe, in acquiring titles by purchase, to the very lands lying within the actual locations aforesaid ; and that one or more deeds and agreements for the purchase of lands lying within said locations, have actually been obtained from the owner or owners thereof ; and your orators have reason to believe, and verily do believe, that they, the said Companies and their agents, will endeavour in every possible mode, to deprive your orators of the benefit of the abovementioned locations, and to procure titles to the lands lying within the same,

wherever it is practicable, in utter disregard of the rights of your orators; and if not prevented will acquire titles by purchase or condemnation, to all of them, and will obtain possession of said lands, under such purchases or condemnations, and will keep your orators out of possession, so that in the event of a decision in favor of your orators, and against the claim of priority set up by the said Companies, your orators cannot without much expense and delay, and calling in the aid of a Court of Chancery, be restored to their priorities as they existed, when said injunction against them was obtained; your orators further shew, that under their said act of incorporation, the location of their road, as they are advised, constitutes the incipency of a legal title to the lands lying within the same, to be perfected within a reasonable time, the said location or determination of the site of said road, being an election on the part of your orators, in the exercise of a general franchise as to the particular application of it, and being also, the first step to be taken by your orators, to acquire a title to the lands for the site of said road; and your orators also shew, that not only were the said locations made as an act of election on the part of your orators, and with the intent and design of determining the site of said road, so that your orators might acquire a title to the lands wanted for the same as soon thereafter as possible; but that as your orators are informed by their agents, and verily believe, a perfect legal title would have been acquired to all the lands lying within the abovementioned locations, by deed or condemnation, or warrants to summon juries to value the same, for the use of your orators, would have been issued, so as to constitute an unquestionable inception of title, before the twentieth day of the present month, and before the said Chesapeake and Ohio Canal Company could have been organized and competent to acquire a title to the same in any mode; and also before the said Potomac Company, if it yet has any rights, could have exercised them, so as to give them even an inception of title, had not the injunction heretofore mentioned, been obtained, by the aid of which your orators have been restrained from accomplishing the objects for which said locations were made, and perfecting the title thus begun, and the said Chesapeake and Ohio Canal Company is enabled, in consequence of its subsequent organization, to acquire a title, or to endeavour to acquire it, as to the said lands, in the very mode in which your orators were acquiring it.

Your orators further shew, that as the bill of complaint of the said companies against your orators alleges, that the injunction sued out by the said Companies was applied for and obtained by them solely for the purpose of protecting an alleged priority and right of election residing in said Companies, as to all the said lands, which exists without any act on the part of said Companies, to secure or vest the title to the same in them, and of procuring a speedy decision upon their alleged right, that the said priority as claimed by them, existing, if it exists at all, without location, purchase or condemnation, on their part to vest it, such acts will not be necessary therefore to protect or sustain their alleged right; that by the injunction abovementioned,

your orators will be left unprotected against the consequences of such acts on the part of said Companies; and that having due respect for and in all respects obeying the aforesaid injunction issued out of Washington County Court, they can be protected against an unjust and unconscientious use or abuse of the same only by confining said Companies to the alleged title as set forth in their said bill of complaint, and by restraining them from acquiring in the mean time a title to the lands lying within your orators' aforesaid locations, by purchase or condemnation, so that if the said alleged priority of said Companies be not sustained, your orators may be remitted at once to all the rights and priorities they enjoyed when said injunction was obtained.

Wherefore, and forasmuch as your orators are remediless without the aid of a court of equity, and as this court possessing jurisdiction coextensive with the limits of the State, is alone competent to give that extensive speedy, and efficient relief, which the nature and urgency of the case require.

To the end therefore, that the said Chesapeake and Ohio Canal Company and Potomac Company, may be required to come in and answer the premises; and that the said Companies, their agents and attornies, or the agents and attornies of either of them, and all persons professing to act under their authority, or on their behalf, or on the behalf of either of them, may be strictly prohibited and enjoined from making any contract or agreement with, or receiving any deed or conveyance from any of the abovementioned owners of the lands lying within the above exhibited locations for said lands, or the purchase of any interest whatever in the same or in any part of them; and also from causing to be issued or executed, or applying for any warrant or warrants, to summon any jury or juries to value the same for the use of either of said Companies, and also from preventing your orators from taking possession of the same, and also strictly enjoining and prohibiting the several Sheriffs and Justices of the Peace, in and for the counties of Frederick, Washington and Alleghany, the latter from issuing and the former from executing any such warrant or warrants; your orators pray your Honor, that the said Chesapeake and Ohio Canal Company and said Potomac Company, may be made defendants to this bill, and that your Honor will grant unto your orators the State's writ of subpoena, directed to the said defendants, and requiring them, the said defendants, to come in and answer the premises, and that your Honor will also grant unto your orators the State's writ of injunction, directed to the Chesapeake and Ohio Canal Company, the Potomac Company, their agents and attornies, the agents and attornies of either of them, and all persons acting or professing to act, under the authority, or on the behalf of the said Companies, or of either of them; and the several Sheriffs and Justices of the Peace of the counties of Frederick, Washington, and Alleghany, strictly enjoining and prohibiting the said Companies, and their said agents, attornies, or other persons acting or professing to act on behalf of said Companies, or either of them, from making

any contract or agreement with, or receiving or obtaining any deed or conveyance from John Mitchell, the heirs at law of the late Jacob Fouty of Alleghany county, or any of them, the widow and heirs at law of the late John O'Neill, or any of them, Simon Taylor, Michael C. Sprigg, Luther Martin Cresap, and the Cumberland Bank of Alleghany, or any of them, for the lands or any interest in any lands by them owned or possessed, and lying within the limits of the actual location of the Baltimore and Ohio Rail Road, as surveyed and marked out by the engineers of the Baltimore and Ohio Rail Road Company, under the direction of the President and Directors thereof, for the route and site of said road, before the 10th day of June, 1828; and also from applying for or causing to be issued or executed, any warrant or warrants, to summon any jury or juries to value the same for the use of said Companies, or either of them; and also enjoining and prohibiting the said Justices and Sheriffs, the former from issuing and the latter from executing, any warrant or warrants, to summon any jury or juries to value any of said lands for the use of said Companies, or either of them, until the claim of priority as set forth by the said Chesapeake and Ohio Canal and Potomac Companies, in their bill of complaint against your orators, filed in Washington County Court as aforesaid, on the 10th day of June, 1828, shall have been finally heard and determined, or until the further order of this Court. And your orators also pray your Honor to grant them such other and further relief as the equity of their case may require. And your orators, &c.

R. B. TANEY,
WILLIAM GWYNN,
J. H. B. LATROBE,
JOHN V. L. McMAHON,
Solicitors for Compt.

Maryland—Anne Arundel County, to wit:

BE IT REMEMBERED, That on this 25th of June, 1828, personally appeared before me the subscriber, a Justice of the Peace in and for the county aforesaid, John V. L. McMahon, who being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith, that he knows or is credibly informed, and verily believes, that the matters and things stated in the above Bill of Complaint, are just and true as stated, to the best of his knowledge and belief.

Sworn to before me,

JOS. HOLLAND.

IN CHANCERY, 25th June, 1828.

Ordered, That writs of Subpœna and Injunction issue, as prayed by the foregoing Bill of Complaint. And it is further ordered, that at any time after the said defendants have filed their answers, the Court will hear a motion to dissolve the said Injunction: *Provided*, the said Defendants give to the said Plaintiff ten days notice thereof.

And the Register is directed to endorse a copy of this order on the said writ of injunction, that it may be served therewith on the said Defendants.

THEODORICK BLAND, *Chancellor.*

True Copy, Test :

RAMSAY WATERS, *Reg. Cur. Can.*

ANSWER

OF

THE CHESAPEAKE AND OHIO CANAL COMPANY

TO THE AFOREGOING THREE BILLS.

THE answer of the Chesapeake and Ohio Canal Company, to the three several bills of injunction, filed respectively on the 23d, 24th, and 25th days of June, 1828, in the Court of Chancery of the State of Maryland, by the Baltimore and Ohio Rail Road Company, against these respondents and the late Potomac Company: which several bills these respondents pray leave to answer as consolidated in one suit.

(1.) These respondents, now and at all times hereafter saving and reserving to themselves all, and all manner of benefit and advantage of exception, to the manifold errors, inconsistencies, imperfections and untruths in the said bills, and in each and every of them contained, for answer thereto, or to so much thereof as they are advised it is material or necessary for them to answer, say, that in order more clearly to illustrate the antiquity of their right and title, and of the public recognitions of their right and title, in preference to all other projects of internal improvement; and to the claims and interests of all other corporations and individuals particularly of the complainants, to appropriate to the construction of the Chesapeake and Ohio Canal, and of its incidental works and appendages, the most eligible, proper and convenient site and route for the Canal through the vale of the Potomac, from tide water to its highest sources, and especially that identical site and route, along the vale and narrow passes of that river, from the Point of Rocks where the river passes through the Catoctin mountain, in Frederick county, Maryland, to Cumberland, in Alleghany county, which the complainants have attempted, or now pretend in their said bills, a right to appropriate and occupy for the site and route of their intended Rail-Road, they deem it expedient and proper to submit to the Court a historical deduction of their title, from the inception of the first scheme for improving the navigation of that river by means of a Canal or otherwise, to its consummation in the charter, by which these respondents are incorporated; shewing the notoriety of the public, and early dedication of the ground in question, to the ends and purposes of a Canal, supplied by the waters of the Potomac and its tributaries; the authentic and

binding acts of public authority, and the implied, as well as direct pledges of the public faith, by which such dedication of the ground in question has been sanctioned and guarantied ; and the conclusive and plenary notice of the same with which the complainants have advanced their adverse pretensions, and in so doing, have not only unconscionably infringed the chartered rights of these respondents, but have attempted to overreach, contravene, and defeat the high objects and intents of public policy, as authentically declared and promulgated by the most solemn conventions of States, communities and individuals, and irrevocably established by numerous legislative enactments.

(2.) That the improved navigation of the Potomac, by means of a canal or otherwise, from tide water to the sources of that river, or at least as high as Cumberland, was early considered, before the incorporation of the late Potomac Company, and both before and after the Revolution, an object of public and national importance, and as such engaged the active attention of the most eminent statesmen and patriots, in Virginia and Maryland ; that immediately after the peace of 1783, it was the first and leading object of public improvement to which those States, and their principal citizens directed their attention ; that the far-reaching views of the eminent citizens conjointly employed by those States in devising and perfecting the plan of that great improvement, and among the most active and zealous of whom were found many of the most celebrated patriots and warriors of the revolution, contemplated it, even at that early period, as the great channel of commerce and intercourse that was to connect the original States with the vast and fertile regions beyond the Alleghanies ; and that the charter of the late Potomac Company was the practical and direct result of those enlarged views and objects, is matter of history, and is more particularly illustrated by the papers and plans of General George Washington ; by the delegation from the states of Virginia and Maryland, of that eminent citizen, and other most distinguished public men of both States, as commissioners to consider and report a plan of the work ; by the public proceedings and report of those commissioners at Annapolis, in the year 1784 ; and by the concurrent laws of Virginia and Maryland, establishing the late Potomac Company, followed up by various acts of the like concurrent legislation, from time to time, enlarging, modifying, or confirming the original charter of that Company.—For authentic copies of some of the preliminary documents and proceedings above referred to, and of all the laws relating to the said Potomac Company, these respondents pray leave to refer to the printed collections of the same, annexed to this answer, among the other public and authentic documents hereto annexed, and enumerated in a schedule hereto annexed ; all of which, they aver to be public and authentic documents, and pray that the same be received and referred to as part and parcel of this their answer.

(3.) It was found, after an experience of between thirty and forty years, that the plan adopted by the late Potomac Company for rendering the river navigable, was essentially defective and wholly

inadequate to the great objects for which that Company had been instituted; that all their large capital, and the long and arduous labors of so many years had been expended, without attaining the great end of an uninterrupted and safe navigation from the tide water to the source of that river; a failure not originating in any defect of zeal or perseverance, or general intelligence in the conduct of that Company, but in the inadequacy of their pecuniary means at the time, in the imperfect state of the science of canalling, and in the general misconceptions of the facilities afforded by the river, itself, for navigation, and of the comparative advantages of a continuous canal through the vale of the river, supplied by its own and its tributary waters, and of what is called sluice navigation; misconceptions common to them and to the whole American community, till the progressive lights of experience and science had subsequently demonstrated the superior advantages of the continuous Canal. When this unfortunate result had become evident, the Potomac Company, as well as the community at large, began to consider, with an earnestness and solicitude, due to the great and extensive interests dependent on the scheme, the means of repairing the original errors in its theory and details, and of reverting to the proper, and now demonstrated plan of a continuous Canal all along through the vale of the river, using the waters of the river and its tributaries, as feeders to the canal; a plan entirely within the scope of their chartered powers, and of the original, notorious and declared ends and objects of their institution; and with this, the Company connected the ulterior plan, to which their chartered limits did not then specifically extend, and the practicability of which had but recently been thought deserving of further inquiry, (after the report of the Secretary of the Treasury, in the year 1808, assuming it to be impracticable for a canal to pass the summit of the Alleghany, for want of an adequate supply of water on the summit level) of effecting a connected canal navigation between the head waters of the Potomac and Ohio rivers. With these views the late Potomac Company, in the year 1819, applied to the Board of Public Works of Virginia, to institute, through their principal engineer, the proper examinations and surveys for determining the best mode of improving the navigation of the Potomac, and facilitating a communication, by way of that river, with the western waters. In consequence of which application the Legislature of Virginia passed their resolution of the 8th January, 1820, requesting the said Board of Public Works to inquire into the expediency of directing their principal engineer to examine the waters of the Potomac, and to explore the country between the Potomac and Ohio, &c. with a view to ascertain and report the practicability of effecting a communication by canals, between those rivers; an authentic copy of which resolution is hereto annexed among the said scheduled documents. And the said Board of Public Works did accordingly cause the proper examinations and surveys to be made by their principal engineer, the late Thomas Moore; who, in the year 1820, made his official report of the same, which,

with the said application from the Potomac Company, was officially printed and published in the annual reports of the said Board, and is hereto annexed among the said scheduled documents.

(4.) The examinations and surveys of the ground itself, by this practical and gifted engineer, gave results very different from those of the report of the Secretary of the Treasury, above referred to, and which had proceeded upon the apprehension of conjectural difficulties, not brought to the test of professional examination and experiment, as will be evident from a comparison of the two reports. This report of Mr. Moore gave a fresh impetus to public curiosity; and the long talked of plan of a connected navigation between the eastern and western waters, was agitated with renewed interest. Then followed the law of Virginia, and the concurring resolutions of the General Assembly of Maryland (also annexed among the said scheduled documents) passed at the December sessions, 1821, of the Legislatures of those States respectively, for the appointment of two commissioners on the part of each State, among other things to examine into and report the state of the navigation of the Potomac, and to advise and consult as to the measures most advisable to be recommended to, and conjointly adopted by the said States, either for giving aid to the Potomac Company in the further prosecution of the work, or for the more effectual improvement of the navigation of the said river, by other means, &c.

(5.) The commissioners appointed in pursuance of the said law and resolutions, proceeded, in the summer and autumn of the year 1822, to execute their commission in its utmost latitude; with the assistance of the said Thomas Moore, the principal civil engineer attached to the Board of Public Works of Virginia, and other competent engineers and surveyors. Their joint report of their proceedings, with an appendix of explanatory documents, was duly returned to the respective Governors of the two States in December, 1822; and by the said Governors officially communicated to the respective Legislatures of those States, at the December sessions 1822 of the same; and were immediately printed and published, at public expense, in both States, by the authority of each Legislature; and a copy of the same report, &c. was in January, 1823, sent with an official and public communication from the Governor of Maryland, to the President of the Senate of the United States, to be laid before the Senate, pursuant to a resolution of the General Assembly of Maryland; and was, together with the Governor's communication, then immediately reprinted and republished by order of the Senate, among its public documents: each of the printed copies, so printed and published by authority of the Legislature of Maryland, and of the Senate of the United States, is hereto annexed among the scheduled documents.

(6.) These respondents also refer to the original communication from the Governor to the General Assembly of Maryland, at the December session, 1821, and the report of the committee of the House of Delegates at that session thereon, as printed and published

by authority of the said House, and hereto also annexed among the said scheduled documents.

(7.) At the same sessions of the two Legislatures of Virginia and Maryland, to which the report of the said commissioners was communicated by their respective Governors, applications were made to each Legislature, by a number of individuals and corporations, acting in concert; for a charter to a new Company, in place of the old Potomac Company, upon certain terms for the surrender of the charter of the latter, approved by them.

(8.) This new charter, connected with a provision for a considerable part of the stock to be taken by each State, was at that time earnestly solicited by the persons principally interested in the scheme; and especially by the three corporate cities in the District of Columbia, who deputed proper agents to solicit and advance the plan, with the two Legislatures. Such progress was made in this matter in the Legislature of Maryland, that, in January, 1823, a bill to establish the Potomac Canal Company, was reported by a committee to the House of Delegates; one of the copies of which, as printed by the authority of the said House, is hereto annexed among the said scheduled documents. But as this was accompanied by a proposition for a large pecuniary contribution from the State, which met with considerable objection and difficulty in the Assembly, and without which the friends of the bill did not deem it material to press the enactment of the charter, that session passed over without any definitive enactment on the subject. At the contemporary session of the Virginia Legislature, on the 22d of February, 1823, an act incorporating the Potomac Canal Company did pass; an authentic copy of which is also annexed among the said scheduled documents.

(9.) The original bill had been presented to the Virginia Legislature, and the enactment of it solicited in the same terms as that above mentioned, in the Maryland Legislature; and underwent, in its progress, sundry changes and modifications, originating with, and suggested by, particular members of the Virginia Assembly.

(10.) About the time that the proceedings were going on in the two State Legislatures, the subject was brought before Congress, in consequence of sundry memorials from the inhabitants of Pennsylvania, Maryland, and Virginia; and of resolutions moved in Congress on the suggestion of certain members of that body. For the progress of that body, in considering the subject and preparing measures for the advancement of the projected canal in the winter of 1821-2, and the ensuing Spring, these respondents refer to the printed and official report of the proceedings of the House of Representatives of the United States, at the first session of the seventeenth Congress, mentioned in the annexed schedule.

(11.) Before the sessions of the two Legislatures of Virginia and Maryland for December, 1823, when the solicitations for the final enactment of the charter were intended to be renewed with unabated activity and zeal, the views of the numerous individuals and communities, interested in the business, were considerably extended and

improved in the scope and objects of the immediate plan of a canal. The great scheme of a canal, not confined to the Potomac region, but forming a connected navigation between the head waters of that river and the western waters, even to Lake Erie, had excited such general attention, and so intense an interest throughout the country, that the people of the States of Virginia, Maryland, Pennsylvania, and Ohio, and of the District of Columbia, solemnly appointed numerous delegates, from among their most respectable and influential citizens, to meet in convention at the Seat of the General Government, and there consult and co-operate for the advancement of the common object. This convention held its first session at Washington, in November, 1823, and its second session at the same place, in December, 1826 : the debates and proceedings in both of which were public, and were respectively printed and published immediately after each session of the convention ; and an authentic copy of all of which, collected in one pamphlet, containing a second printed edition of the proceedings of the first session, together with the proceedings of the second, printed and published immediately after its adjournment, is hereto annexed among the said scheduled documents.

(12.) From the time of the organization of this body, the whole management of the undertaking, the business of maturing its plan, of promoting and soliciting its general interests, and the grant of a charter and public patronage from the several Legislatures and Governments upon which it more particularly depended, and in fulfilment of the enlarged and beneficial views disclosed in the proceedings of the convention, devolved upon that body, and the several standing committees appointed by, and acting under, its authority, as recorded in its proceedings ; reinforced by the occasional representations and memorials of the corporate cities in the District of Columbia, and the commissioners appointed by the Executives of Virginia and Maryland, and the President of the United States, to open subscriptions for the capital stock of the company, pursuant to the charter finally obtained. The report of the Central Committee of the said convention, as printed in the aforesaid proceedings of its second session, in December, 1826, correctly details the actings and doings of that and its associate committees, and the general objects and results of their labors during the recess of the convention ; and these respondents refer to the same, among other of the recorded and published proceedings of the said convention, as part of this their answer. For the further proceedings of the said convention and its committees, and of other parties interested in the public project of the Chesapeake and Ohio Canal, and for the action of the public authorities upon the subject, from the adjournment of the first session of the said convention, in November, 1823, down to the passage of the act of Congress of the 24th May, 1828, authorizing a subscription to the stock of the Chesapeake and Ohio Canal Company, the respondents refer to all and singular the public proceedings and acts of the Legislatures of Virginia, Maryland, and Pennsylvania, and of the Congress of the United States, and the several committees of

those bodies, as recorded and published in their respective journals, reports, documents, and bodies of laws ; the whole of which, in any manner relating to the subject of the Chesapeake and Ohio Canal, its plan, course, and construction, to its adoption by the public authorities as a work of national import, to the interest taken in it by the several States and the United States, to the incorporation of this company, and to all the preparatory legislative deliberations, measures, and proceedings, leading to that act, or consequent to it, these respondents pray may be referred to, and taken by this Court as part and parcel of this answer, and as public, authentic, and notorious in themselves.

(13.) From these documents, the respondents deem it material by way of illustration, here to recapitulate only the following facts, which are verified in detail by the said documents, and are true and of public notoriety.

(14.) At the opening of the first session of the Eighteenth Congress, in December, 1823, the President of the United States, in his message to Congress, having direct reference to the said convention, and its proceedings in the month of November preceding, mentioned, with decided approbation, the plan of the Chesapeake and Ohio Canal, as having been suggested by many patriotic and enlightened citizens, and recommended an adequate appropriation for the employment of a suitable number of officers of the corps of Engineers to examine the ground and report their opinion thereon ; and, also, to extend their examination to the several routes through which the waters of the Ohio may be connected, by canals, with those of Lake Erie.

(15.) This, among other important objects of internal improvement, having been thus officially brought before Congress, the whole subject was referred to a committee of that body, called the Committee on Roads and Canals, who, at the same session, reported a bill which was passed on the thirtieth of April, 1824, appropriating the sum of thirty thousand dollars for the purpose of procuring the necessary surveys, plans, and estimates, upon the subject of roads and canals. In the month of May following, the President of the United States appointed, from among the corps of Engineers, and the Topographical and Civil Engineers in the service of the United States, a Board of Internal Improvement, with assistants, to superintend the execution of the provisions of the said act ; and attached to the said Board several officers of the corps of Engineers and of the Topographical Engineers, with sundry civil engineers and surveyors in the service of the United States, to perform the practical operations in the field, under the direction of the Board.

(16.) The Board was instructed "to make an immediate reconnaissance of the country between the tide waters of the Potomac and the head of steam-boat navigation of the Ohio, and between the Ohio and Lake Erie, for the purpose of ascertaining the practicability of communication between those points, of designating the most suitable route for the same, and of forming plans and estimates, in detail,

of the expense of execution." The Board was also instructed to use every possible exertion to have their report on this important line of communication prepared in time to be submitted to Congress at their next session. These examinations and surveys were prosecuted with the utmost vigor and diligence; and, on the 14th of February, 1825, the President of the United States communicated, in a special message to both Houses of Congress, the result of the labors of the Board and their assistant corps, as far as they had then proceeded; which was immediately printed and published by order of each House respectively. These operations were resumed and completed, under the direction of the Board, in the ensuing season, and a detailed report of the same made by the Board to the Chief Engineer, on the 23d day of October, 1826; which was, in like manner, communicated to both Houses of Congress, in special messages from the President, on the 7th of December, 1826, and, in like manner, immediately published and printed by order of each House. These several reports were accompanied by detailed descriptions and surveys, and large maps and profiles; and exhibited, with the utmost clearness and minuteness, the whole route of the canal from Georgetown and the head of the tide water of the Potomac to Cumberland, and thence to its western termination; the plans and various sections of the canal, the geography and topography of the ground through which it passed, with the detailed estimates of its cost, including the section of the canal from the head of tide water to Cumberland; and minutely exhibiting its course, and its various subdivisions and sections, on the western and northern, or, as expressed by the engineers, the left bank of the river between those points. The printing of this last report having been expedited by the printers to Congress, in anticipation of the President's message, and of the orders of the two Houses, several copies of the same were laid before the said convention, at its second session, by direction of the Secretary at War, and formed the ground work of the proceedings of that body and its committee, towards a corrected estimate of the cost of the canal; the high estimates of the cost, given by the Board of Internal Improvement, being considered as founded on erroneous data.

(17.) During that same session of Congress, several members of the House of Representatives, considering the disagreement between the estimates of the Convention and those of the Board of Internal Improvement, and the necessity of the most exact preparatory estimates, as well for the success of the various applications to Congress and to the States, for subscriptions to the stock of the Canal and other aids, as for the general recommendation of the plan to the public, requested the President to submit these estimates to the revision of practical civil engineers, of long-trying experience and skill. The President accordingly appointed James Geddes and Nathaniel Roberts, two eminent civil engineers, who, to great professional skill, added a long experience in the practical execution of other works of a similar description, to view and resurvey the route of the said canal, and revise the estimates of its cost. This duty was per-

formed by these engineers, with all diligence and despatch ; and their detailed report of their surveys and estimates of the same, from Cumberland, or about one mile below Cumberland, to Georgetown, was duly returned to the Engineer Department, accompanied by detailed descriptions, surveys and maps of the route and site of the canal, between those points. This last report and its results were largely quoted and commented on in a report of the Committee on Roads and Canals, in the House of Representatives of the United States, on the 11th February, 1828, which report of the said Committee was then immediately printed and published, by order of the House, in the due course of its proceedings ; and on the 26th of the same month, a resolution passed the House, calling upon the Secretary of War for the report, at large, of the said civil engineers ; and the same was accordingly transmitted to the House on the 10th of March following ; and then immediately printed and published by order of the House.

(18.) And these Respondents, further answering, say, that upon the completion of their charter by the act of Congress passed on the 3d March, 1825, assenting to and confirming the acts of Virginia and Maryland, commissioners were duly appointed by the Executives of Virginia and Maryland, and the Government of the United States, pursuant to the directions of the charter, to open books for receiving subscriptions to the capital stock of the Chesapeake and Ohio Canal Company ; and the said Commissioners, in pursuance and execution of their appointment and authority, on the 20th of August, 1827, published due notice that such books would be open at various places in the United States, on the 1st of October then next ensuing ; which notice was published weekly in various places, at or as near as practicable, the respective places where the books were to be severally opened ; and among others in the city of Baltimore ; a copy of that published in the National Intelligencer, at the City of Washington, is annexed ; and the others were in the like form, only designating other Banks or Agents, and other places for receiving the subscriptions in the different sets of books, all to be opened on the same day. The opening of the books had been so long postponed, at the request of the central committee of the said convention, in order to obtain, in the first instance, the most satisfactory estimates of the cost of the canal ; in the mean time the conflicting estimates of the Board of Internal Improvement and of the said Canal Convention were before the public ; and the Engineers, Geddes and Roberts, were then engaged in their surveys of the route and revision of the estimates ; whose report, though not then completed, would, as was well understood, confirm, upon the most unquestionable data and calculations, the lowest estimates.

(19.) Pursuant to the said notice, the subscription books were duly opened, on the said first of October, 1827, and subscriptions to a large amount were received : a correct summary of the different amounts whereof, at different periods, from the _____ day of _____, till the _____ day of _____, is hereto annexed.

(20.) The subscriptions on the part of the United States, and of the State of Maryland, as authorized by their respective laws, have been duly fulfilled, upon the conditions respectively prescribed by them, and were made at the respective dates mentioned in the said summary. Notwithstanding the subscriptions amounted, so much sooner to the one-fourth of the capital stock, required by the charter, to give immediate effect to the incorporation of the Company; it was deemed advisable to postpone a call of the stockholders, for the election of their President and Directors, in the certain expectation of an act, at the then ensuing session of Congress, authorizing a subscription on the part of the United States; and in order to give an opportunity to Maryland and the United States, on the completion of their respective subscription, to vote at the said elections, and on other matters to be brought before the meeting. The said Commissioners, accordingly, on the 5th day of March, 1828, called a meeting of the stockholders, for the purpose of electing their President and Directors, on the 7th day of April next ensuing; by which day it was expected the two subscriptions just mentioned would be completed, by means of a bill then pending in Congress. But some unexpected delays in the passage of this bill occurring, the call was postponed; and on the 26th day of May thereafter (the said bill authorizing the subscription of one million of dollars on the part of the United States having passed on the 24th of the same month) the call was renewed, and the general meeting of the stockholders appointed for the 20th of June, 1828. These calls of the general meeting of the stockholders, and the intermediate postponement of the first, were duly published by the said commissioners, in several public prints, or newspapers, at various places in the United States, and among others, at the city of Baltimore, pursuant to the directions of the charter; copies of which, as published in the National Intelligencer at the city of Washington, are hereto annexed.

(21.) Pursuant to the last of said calls, the stockholders assembled at the City Hall, in the City of Washington, on the 20th day of June, 1828, and duly elected their President and Directors, who were immediately organized according to law, and have ever since been diligently engaged in prosecuting the execution of the canal, pursuant to their charter, with all practicable vigor and despatch.

(22.) The Potomac Company, by their several authentic and valid acts, in their corporate capacity, on the 16th of May, 1825, the 10th of July, 4th and 15th of August, 1828, duly declared their assent to the provisions of the said charter of the Chesapeake and Ohio Canal Company, in the manner prescribed by that charter; and duly surrendered their charter, and conveyed, in due form of law, to the Chesapeake and Ohio Canal Company, all the property, rights, and privileges by them owned and possessed under their charter; which surrender and transfer was duly accepted by the Chesapeake and Ohio Canal Company; true copies of all which several acts of the two Companies are hereto annexed as part of this answer.

(23.) The last named Company, also, at their said general meeting

in June, 1828, and at several adjourned meetings of the same, in June and July of that year, adopted and passed, among others, the several resolutions, by-laws, and regulations, printed copies of which are annexed among the said scheduled documents; and among these, the annexed resolution adopting the route and site of the canal surveyed and laid down by the United States Engineers, and by Messrs. Geddes and Roberts, &c.

(24.) Among the works done under the orders of the President and Directors, since the organization of this Company they have caused detailed plans of their canal to be surveyed and laid down by their engineers in a practical form for contractors, upon the route before surveyed and laid down under the direction of the said Board of Internal Improvement, and by Messrs. Geddes & Roberts, as aforesaid, from Georgetown, in the District of Columbia, to Williamsport, in Washington county, Maryland; and for the distance of about 48 miles from Georgetown, up to within about a half mile of the Point of Rocks, or foot of the Catoctin Mountain, the canal has been actually put under contract, for execution, upon these plans; and the work was actually commenced by the Contractors, in September last, has ever since been diligently and efficiently prosecuted by them, and such progress made in it, as leaves no rational doubt of its completion, upon the most enlarged scale and improved plan contemplated by its projectors, far within the time prescribed by the charter; and the said President and Directors would, before now, have had at least so much more of the said canal, as the section from the Point of Rocks, in Frederick, to Williamsport, in Washington, under contract, and in actual progress, but for the interruptions thrown in their way by the complainants, on the route from the former Point to Cumberland. The Respondents, by way of further illustrating the plan and route of their canal, refer to the annexed copies of the plans and surveys of the same, from the same Point of Rocks to Williamsport, executed by their engineer, which they pray may be taken as part of this their answer.

(25.) As to the pretensions of the complainants to interpose and oust these Respondents of their priority of selection and their vested right in the route of their canal, and to intrude the Rail-Road of the complainants upon the same, these Respondents say, the Legislature of Maryland never contemplated, by the charter granted to the complainants, any interference with the route selected for the canal; and if there be involved in the terms of that charter any covert or latent construction, or operation in practice, authorizing such interference, (which these Respondents are well advised there is not) and if the parties, who projected the said Rail-Road, and actively promoted and solicited and finally obtained and now enjoy the charter for the same, originally intended that any such latent construction, or operation in practice, should be involved in its terms, with a premeditated design to press the advantage of such in their future operations under their charter (which these Respondents by no means charge, but on the contrary presume the said parties

were at the time direct and sincere in their professed object, and in the ostensible purpose and intent for which they solicited their charter) then it would be manifest that the Legislature and people of Maryland were misled and deceived into the grant of a charter for the said Rail-Road, contravening the well known views and established policy and interests of the State, long avowed and partially acted on by the Legislature, and the solemn faith and compacts of the State, as well with her co-sovereigns, Virginia, Pennsylvania, and the United States, as with the Potomac Company, with the Chesapeake and Ohio Canal Company, and with the public at large. For not only was any intent (if it existed) to supersede or interfere with the proper route and site of the canal, and occupy the same with the Rail-Road, kept out of view, and reserved and concealed in the minds of the parties who solicited and obtained the Rail-Road charter, but it was studiously and elaborately masked, by their openly professing, and setting up a different and shorter route for the Rail-Road, than any practicable route for the canal : and upon this very difference in the routes, they valued themselves as having projected an improved mode of intercourse with the west, very superior to the canal.

(26.) The project of the said Rail-Road was originated and set in motion at a meeting of a number of the citizens of Baltimore, held at that city, on the 12th and 19th of February, 1827. The proceedings of that meeting, with a report of a committee unanimously approved by the meeting, were printed and published by its authority; the whole train of the elaborate reasonings of which tends to establish two points: 1st. The intrinsic advantages, in point of expedition and convenience of a Rail-Road over a canal. 2dly. The particular advantages of the projected Rail-Road from Baltimore to the Ohio, over the Chesapeake and Ohio Canal; among the most decided of which was, that the former was to reach the western trade, by a different and shorter *route*. Upon this latter point, the most minute calculations are made of the differences, in distance and time, between the known route of the canal and the intended route of the Rail-Road.

(27.) The direct route proposed for the Rail-Road, as contrasted with the circuitous route chosen for the canal, was vauntingly printed in capitals; and its various advantages reiterated in every form calculated to illustrate the superiority of the Rail-Road over the canal. The charter of the Rail-Road Company was immediately solicited and obtained of the Legislature of Maryland, then in session, by the committee, or some of them, named in the said printed proceedings; the pamphlet containing the said proceedings, was circulated among the members of the Legislature, and the same topics were enforced and illustrated by the committee in the course of their solicitations. All the active and influential persons composing the said meeting and its committees, became members of the corporation when the said Rail-Road Company became incorporated; and the President and Directors of that Company were chosen from among

the same description of persons ; and so continued to the time of the filing of the complainants' said bills, and yet so continue, as these Respondents are credibly and certainly informed, and do verily believe.

(28.) One of the said pamphlets, so published by the said meeting, or by its committee, is hereto annexed among the schedule documents ; and to that as well as to the representations and memorials of the said Rail-Road committee, to the Legislature, and the proceedings of the Legislature thereon, preparatory to the grant of the said Rail-Road charter : these Respondents pray that reference may be had as part and parcel of this answer.

(29.) These Respondents are further credibly informed, and verily believe, that, not only was all idea of any interference with the site or route of the canal kept out of view, and masked by the *general* proposition of a different route for the Rail-Road, studiously impressed on the Legislature, and promulgated to the public, as one of the pre-eminent merits of the Rail-Road project, but that the said parties, so engaged and entrusted in that project, and in the promotion of it as aforesaid, and now claiming the benefits of the charter for the same, did, both before and after the grant of that charter, and while the same was in a course of solicitation before the Legislature, and down to a period considerably posterior to the subscription of the stock, and the formation of the Company, even specify the difference between the two routes, both to the members of the Legislature, and otherwise to the public ; that is, a direct route from Baltimore to the Ohio ; cutting down the hills between Baltimore and the Monocacy, 50 or 60 feet, by machinery, and forming an inclined plane to the Monocacy ; and then crossing the mountains in the direct route to the Ohio, by a number of stationary steam engines, computed at the number of a hundred ; that afterwards, in the winter of 1827-8, when the complainants were soliciting of the Legislature, the law authorizing a subscription on the part of the State, to the Rail-Road stock, the President of the said Rail-Road Company, in behalf of the Company, assured the members of the Legislature, and especially the members from the Western counties, that the Rail-Road would pass by Westminster, through Harman's Gap to Williamsport, and actually accepted the services of Mr. James Johnson, of Frederick, to explore the mountains on that route ; that the said parties, on all these occasions, and continually, until they formed their sudden resolution in May, 1828, to pounce upon the route and site chosen for the canal, publicly and distinctly disclaimed any rivalry or interference with the canal ; and gave out that the comparative directness and shortness of the route of the Rail-Road, and its other advantages, would place it above all competition from the canal.

(30.) If, on the other hand, the new route now proposed for the Rail-Road, and the idea of ousting the Chesapeake and Ohio Canal of its chosen and proper route were after-thoughts, originating with the complainants, or suggested to them, after their organization as a

body corporate under their charter, then it is equally a perversion and abuse, in practice, of the original and genuine intent of their charter, and the privileges which that instrument was designed to confer on them. These Respondents are not certainly or precisely informed at what time such change in their views was effected, or upon what ostensible grounds; but these Respondents have good reason to think and believe, and do verily think and believe, that it was not until after the advertisements of the said Commissioners notifying a call of the stockholders of the Chesapeake and Ohio Canal Company, and the near prospect of large subscriptions to the stock of that Company from the State of Maryland and the United States, gave sure promise of its speedy and efficient organization, and suggested to the complainants the policy of some bold and extraordinary measures to defeat it. The actual operations of the complainants, through their agents, in appropriating to themselves the route and site chosen for the canal, did not commence, as these Respondents have good reason to believe, and do verily believe, and so far as they have been able to ascertain from the documents and exhibits of the complainants, or other evidence, till some time about the middle of May, 1828.

(31.) These respondents are further credibly and certainly informed, and do verily believe, that the real tendency and effect of those operations, as an adversary interference with the canal, were studiously masked and concealed by the complainants and their agents; and that they pushed them on with unusual and otherwise uncalled for hurry and precipitation, for the direct and concerted purpose of completely forestalling the chosen and well known route and site of the canal, before any of the persons, materially interested in the conservation of its rights, could have notice; and with such views and intents, that the agents, who were employed by the complainants in making their locations of the rail-road on the route of the canal, gave out to the people in the neighbourhood who witnessed their proceedings, that they were merely making experiments, and intended no interference with the canal; and some of the persons with whom contracts were made for cessions of their lands, were also informed by such agents, that the only intent and effect of such contracts were to give permission to the surveyors of the rail-road to pass through. So much, however, is certain, that it was not till about the 7th of June, 1828, that the persons principally concerned in the conservation, *ad interim*, of the rights and interests of the canal, (as the said central committee, the said commissioners appointed to open subscription books, and call the first meeting of the stockholders, the Secretary of the Treasury representing the interest of the United States in the stock of the company, and other principal stockholders) received with the utmost surprise, the first information that the agents of the complainants were proceeding, with the utmost haste and secrecy, in an attempt to forestall the chosen route and site of the canal, by making their surveys upon the most important and indispensable parts of it, and taking up the ground by contracts

with the adjacent proprietors. Measures were immediately taken at Washington, by the persons principally interested, and with the concurrence of the Secretary of the Treasury, to despatch proper agents and counsel to ascertain the true state of the case, and to take the proper measures for the protection of the rights of the Canal Company. The bill of injunction, in the name of this company and of the Potomac Company, against the now complainants, &c. in Washington County Court, and the injunction thereon grounded, on the 10th of June, 1828, to which the complainants have referred in their said bills, were the result of those measures. To that bill, a copy of which is hereto annexed, these respondents also refer, and pray that it may be taken as part of this answer; now here re-asserting the material facts therein stated, and all the rights and immunities therein claimed and asserted on behalf of this company; all of which they pray that they may have the like benefit, as if ever so formally averred or pleaded in this answer.

(32.) These respondents further answering say, that at the Point of rocks, where the Potomac intersects the ridge of the Catoctin mountain, and where the pretended route of the said rail-road is described by the complainants in their said bills to strike the Potomac river, there is one of those narrow passes in the actual route and site of the canal, as officially and definitively selected, surveyed and laid down as aforesaid, which presents no choice of ground for the canal; but where for a considerable distance up the river along the foot of the mountain and its spurs, the canal is confined, by the nature of the ground, within certain primeval and unremovable barriers; as is more particularly shown and illustrated by the topographical descriptions, maps and profiles of the engineers, herewith exhibited and above referred to. Through the whole of this pass, the space between the jutting and precipitous rocks, on the one hand, and the river on the other, is so narrow, that in order to obtain the proper and necessary breadth for the canal and its towing path, a solid and wide wall must be constructed in the river;—and if the canal be intercepted and cut off by the rail-road, or otherwise, from that single route through this pass, it must be completely intercepted and cut off from the whole of its routes above; and be, either entirely stopped and defeated, or compelled to the precarious, dangerous, and enormously expensive, and every way inconvenient and burthensome expedient of crossing to the opposite side of the river on an aqueduct; and then, in order to regain its route to its western terminus, of recrossing the river on another such aqueduct, at such unknown and uncertain point above, certainly not lower than Cumberland, as where it may please the complainants to allow them verge and space enough. Through all the space between these two points, on the southern and eastern banks of the river, these respondents will then have to explore a new route and site for their canal; all the elaborate reconnoissances, surveys, maps, plans, &c. by which the present and appropriate route and site of the canal have been determined; all the estimates already made of its cost, inseparable as

are their data from the localities of the actual route and site of the canal so determined, and upon the faith of which and of the already ascertained practicability of that route, the subscriptions to the stock of the canal have been made ; all the labour and expenses of years consumed by the engineers of the United States and of this company and their coadjutors, in ascertaining these results, must then be utterly wasted and thrown away ; and the whole process be gone over again, on the opposite side of the river, at an immense increase of expense and loss of time to the said canal company, and to the utter peril of the franchise bestowed on them by their charter, and every way to their inconvenience and oppression. Besides, if it were possible (which it is not) for the said canal company, after deserting their appropriate route, as already specifically selected, surveyed and laid down, and conceding to the rail-road the choice of the site next the river, at any labour or expense within the reasonable compass of human means, at all commensurate with the object, to lay off and conduct the canal outside of the rail-road, by cutting down the sides of the mountains and rocky precipices, that bound their operation through the said pass, and through many other narrow and difficult passes of a like description, and presenting some of them equal, and others nearly equal difficulties on the route in controversy, from the Point of Rocks to Cumberland, to the proper level, and of the proper breadth for the canal and its towing path, so as to keep the canal on the same side of the river, with the rail-road interposed between it and the river all the way between those points ; still the inconveniences and impediments to the proper construction, supply and use of the canal, would be immense and incalculable, if not insuperable, by its being cut off and intercepted, in so great a portion of its route, from its cognate source and appendage the river, and the numerous and necessary feeders and communications between it and the river ; the frequent and continual recurring necessity of such communications throughout that route, being indispensable alike to the proper construction of the canal and its appendages, as to the purposes of intercourse, commerce and navigation, for which alone it was and is designed. The above mentioned pass at the Point of Rocks, and for some distance above the point so called, is not the only one of that description and presenting the like narrow and difficult bounds to the canal, on the route in controversy from that point to Cumberland ; but there are numerous others on that route, where the Potomac breaks through the numerous ridges, mountains and rocky precipices, where it is hemmed in by rocky and high banks, with a very narrow space between ; and where in some instances equal, and, in other instances, nearly equal difficulty, labor and expense to open and improve the site for the passage of the canal and its appendages, occur as at the Point of Rocks ; as is more particularly shown and illustrated by the documents above referred to and cited for the topography of this last mentioned pass.

(33.) These respondents submit to the equity and discretion of his Court, that even if originally, and by virtue of their prior grants

and franchises, they had no priority of right to the choice and selection of the route and site of their canal, along the margin and bank of the river Potomac; if no authorized, determinate, and binding selection and designation of such route and site had been made; and if the complainants stood on a foot of perfect equality, as to the date and origin of their franchise; still the preferable right of this company to conduct and construct their canal on the route and site in controversy, is just as absolutely determined by a concurrence of equitable and cogent circumstances; by the intrinsic qualities and faculties of these two works, and by their respective relations to the means, the objects and the uses of their construction; and to the nature of the obstructions and public inconveniences which they are designed to remove by artificial means. Because, according to the complainants' own shewing, and the facts are otherwise true and notorious, they have the choice of two or more practicable routes for their rail-road, without any interference with the canal, or connection with, or even approximation to the river; the different routes only presenting some differences in the comparative labour and expense of construction; and these compensated, if they occur, with any considerable increase, on the more northern route originally proposed for the rail-road, by the advantages and savings, from directness of course and shortness of distance, as the principal and leading personages, both among the original projectors and promoters, and the present managers and proprietors of the rail-road, have repeatedly averred and publicly contended: the principle, and the operation of the lifting power of stationary steam engines, by which the rail-road overcomes ascents, and gains new levels, admit of an infinitely greater diversity and extent of application, than that of the canal, circumscribed and limited as it is by water levels, and are perfectly practicable and convenient, and within the ordinary compass of that power, either to overcome all the necessary ascents on the more northern and direct route first proposed for the said rail-road; or if, what the complainants designate the southern and circuitous route be preferred by them, to assume, with ease and convenience, a higher level than the canal, on that route, and leave the canal ample verge and room between the rail-road and the river: there is no necessary or proper connection or dependence between the rail-road and the river, either intrinsically, as regards the construction, appendages and uses of the rail-road, or relatively, as regards the purposes of intercourse, trade and commerce, which the rail-road was designed to subserve; whereas, the river is, as it were, the life-blood of the canal; and continual access and frequent communication, from the one to the other, are inseparable, from the very idea of the canal: And lastly, the complainants, before they took any step towards a change of their original route for the one now in controversy, or towards any claim or appropriation of the latter, or even contemplated any such change, claim or appropriation, had the most ample, direct and conclusive knowledge and notice of all the steps that had been taken to designate and appropriate this same

route for the canal, they had the most certain knowledge that every procedure, practicable in the nature of things, had been adopted to consummate and render effectual such designation and appropriation of the canal route and site, both before and after the consummation of the charter to the said canal company, by the passage of the act of Congress, confirming it, and before the charter of the Rail-Road Company was either enacted or projected; and that such designation and appropriation of the route and site of the canal, its ascertained practicability and facilities of execution on that route, and the estimate of its capital and cost, which were founded on the local circumstances of that route, all entered into the considerations, motives, and terms of the charter, and more distinctly of the subscriptions to the capital stock created by it; and with the entire notice and consciousness of all these circumstances, the complainants, at the very moment when they perceived that the said Canal Company, then legally constituted a body corporate, were just coming into the actual fruition of the right thus claimed and secured to them, took advantage of their want of executive organization to forestall and oust them of that right, under the naked pretext, that the proprietary right and title of the lands, necessary to be purchased or condemned of individuals, had not been technically vested in the company. But these respondents are well advised by counsel, that they may, lawfully and of right, maintain before all courts of law or equity, and in all other places whatsoever, and they do now here maintain, that independent of any prior and specific location, survey or appropriation, of any precise site or route of the canal, there was originally vested in and guaranteed to the late Potomac Company, by virtue of their charter, the exclusive privilege, use and property of the entire stream, bed and channel of the river Potomac, with its branches and tributaries, and whatsoever, as part, parcel or appendage of the river, constituted in any part of the public domain, from tide water to the highest place practicable for navigation on the north branch of that river; and over and above these, the prior and exclusive election, pre-emption and appropriation by the prescribed modes of purchase or condemnation from all the adjacent lands of the individual proprietors, all along the banks, cliffs and low grounds contiguous to the river, and within the proper sphere and compass of any of the authorized operations of the company, of the proper ground for the route and site of the canal or canals, and the auxiliary works and appendages of the same, and of the materials for the same, contemplated and authorized by that charter; that this exclusive right and priority of election, pre-emption and appropriation, extended to all the lands of individuals and public domains, within the precincts of any of the actual or possible operations of the said company, authorized by their said charter; and that, within those precincts no other corporation in present or future existence, nor any other description or body of men whatever, collectively or individually, had, or could acquire any right or title, under any pretence of a right of way, road, or improvement whatsoever,

public or private, in any manner to restrict or confine the said Potomac Company, or their authorized operations under their charter, to any one among any possible number of locations or sites, or in any manner to diminish or circumscribe their free choice and election of the same; far less, to exclude them from priority in the choice and election of the only, or of the most eligible, practicable and convenient and still less of previously elected and designated locations or sites for the proper execution of the works authorized by their charter. That all these rights and privileges, in all their integrity, force and efficacy, have been, and are, duly and indefeasibly transferred to, and vested in these respondents, by virtue of their said charter, and of the surrender and transfer to them from the late Potomac Company; with such extension and modification as the terms of this new charter, and the extended and improved scheme and plan of the works thereby authorized, prescribe or require: That, independent of any proprietary rights or corporate privileges and immunities, specifically derived by these respondents from the late Potomac Company, all the rights, privileges and immunities hereinbefore described or mentioned as vested in and guarantied to the Potomac Company, and all the analagous rights, privileges and immunities, enlarged and modified in conformity to the scheme and provisions of the new charter of these respondents, and to the more extended and comprehensive plan of the works, and improvements thereby authorized, were and are, indefeasibly vested in and guarantied to these respondents, by the sole force and effect of their own charter: That the charter of the said Rail Road Company, does not, and of right, could not, in terms, abolish or take away, or in any manner diminish or alter, in the whole, or in part, either of the prior charters to said Potomac Company, and to these respondents, or any of the corporate rights, privileges or immunities, expressly granted, or necessarily inferred, from the said prior charters, or either of them, and that neither of the said charters, nor the franchises thereby created, can be abolished, taken away, or in any manner altered or diminished by implication, even if the Legislature of Maryland were competent which it was not, when the charter of the said Rail Road Company was granted, to pass any law, or grant any charter, or any right, title, privilege or authority to be exercised under such law, or charter, abolishing, taking away, or materially diminishing the said prior charters, or either of them, or any of the rights, privileges, or immunities, by them, or either of them, communicated to and vested in these respondents. That the charter granted to those respondents, as well as that to the late Potomac Company, being in the nature, not only of a contract between the sovereign parties to it, on the one hand, and the members of the body corporate thereby created, on the other, but of a solemn and binding compact between those sovereign parties themselves, was, and is altogether irrepealable and indefeasible, in the whole or in any part, by either of these parties, without the concurrence of all; or by all without the assent of the corporation in which the rights, privileges and immunities, granted

by such charter, are vested and reside : That the said charter of the complainants, and the authority exercised, or pretended to be exercised under it, in so far as the same purport, or are, or may be construed and executed, in derogation of the corporate rights, privileges or immunities, granted and vested by the said prior charters, or either of them, are repugnant to the Constitution of the United States, and utterly inoperative and void : and lastly, that, whatever the abstract right of prior choice and election, claimed by these respondents in other passable routes or sites for their canal, and the incidental operations authorized by their charter, the ground designated for the route and site now in controversy, has been effectually elected and appropriated by these respondents, to the exclusion of the complainants : Of all which matters, these respondents crave all the benefit and advantage in this answer, that they might, or could have had, in any form of equity-pleading whatever.

(34.) Of all the documents of title, under which the complainants pretend a claim to the route and site, in controversy, for their rail road, and to the lands in controversy, as referred to, and it is presumed, filed with their said bills, these respondents or their counsel have only examined such, as were filed for enrolment in the clerk's office of Washington county, Maryland, as late as the 10th of June last, and in the clerk's office of Frederick, as late as the 11th of the same month, and the agreements with Henry and Frederick Dellinger, filed in this court with the complainants' bills, against those persons, in the same month ; the documents, so examined, comprehend, as these respondents are credibly and certainly informed, and verily believe, the whole of the said pass at and above the Point of Rocks, and some other of the like narrow and difficult passes, on the route in controversy, and the identical route and site elected, designated and surveyed for the canal as aforesaid : and as to all the other documents of titles set up and pretended by the complainants in their said bills, and therein referred to as exhibits, such as deeds, agreements, locations and specifications of locations, warrants for condemnation, &c., these respondents are not more particularly informed of their nature or authenticity, than what they collect from the allegations of the complainants in their said bills, and from careful inquiries in the country into the nature and extent of the ground covered by the claims of the complainants, in virtue of those documents, without any actual inspection of the documents themselves ; and, therefore, for greater certainty, they refer to the said documents and exhibits themselves, and the authentication of the same ; all of which or office copies of such of the same as have been duly recorded, these respondents presume, are or ought to be filed as the exhibits referred to by the complainants in their said bills. The ground which these documents import an intent to bargain or sell, or appropriate, or in any manner to affect by location or condemnation, and which the complainants now claim in virtue thereof, for the route and site of the said rail road, throughout the whole extent of that ground upon or towards the line of the river Potomac, includes the identical route and site

selected, designated and surveyed for the said canal as aforesaid, and all the slight variations of the same in the several reconnoissances, surveys and locations made of the same as aforesaid, and every other practicable route and site for the canal and its appendages on the hither side of the river, from the Point of Rocks to Cumberland; or if there be any gap in those pretended appropriations of such ground for the rail road, where the ground designated for the route of the canal is not covered by that claimed under those documents, it would be rendered utterly useless and impracticable to these respondents, if the actual claims of the complainants were allowed: but whatever may be the local extent of the ground, so claimed by the complainants in virtue of their said pretended locations and appropriations of the same, the complainants in their said bills are understood to claim, as the fact is otherwise certain, that it comprehends the whole of the said pass at and above the Point of Rocks, and all the most difficult of the other narrow passes, above described as on the route in controversy; and without the possession of which, these respondents would be compelled to abandon the whole of the designated route for their canal, without having left to them any practicable route for the same on the hither side of the river. The ground, so claimed by the complainants in virtue of the several titles and documents referred to in their said bills, extends to the river Potomac itself, comprehending whatever of its margin and water may appertain to the lands or rights of the individual proprietors; and in conducting the said rail road through several of the narrow and difficult passes above-mentioned, the complainants would have to construct walls in the bed of the river, in order to get the proper breadth for their road, in like manner as these respondents would have to do for their canal at the same places; and these respondents have no doubt it is in the plan of the said rail road, as devised and specified by the engineers of the complainants, to construct such river walls.

(34.) These respondents do not know, admit, or believe, that the Complainants had caused any comparative or experimental examination of what, in their said bills, they have described as the southern route for their said Rail Road, that is, of the route in controversy from the Point of Rocks to Cumberland, or any part of it, to be made; or that there was any recommendation of that route, founded on any preliminary examination of the same by their engineers, when they determined upon the attempt, in direct and concerted hostility to and derogation of the rights of these Respondents, to adopt and appropriate that route to themselves, and commenced their operations in May, 1828, for the location of their road on that route, and the appropriation of the ground constituting the route and site of the canal as aforesaid: but these Respondents are credibly and certainly informed and do verily believe, that without any previous examination of that route by their direction or authority, they suddenly despatched their agents, attorneys and engineers, some time about, or after the middle of May, 1828, (as to the precise time these Respondents for greater certainty refer to the documents of

title, whether deeds, agreements, or warrants exhibited with the said bills of the Complainants) to seize upon the said route by the means set forth in their said bills; and that, without any previous survey or examination whatever of the route, on their part or behalf, they made their pitch, at once, and in the first instance, upon the narrow and difficult passes above described on that route, "and wherever the character of the ground was such (according to the description of it by the Complainants in their said bills) as to leave but little choice in the location of the said road, and of course, no choice in that of the canal: that these measures were pursued with the most extraordinary and precipitant haste; their agents riding about and ranging the country with ceaseless activity, day and night, hunting up the proprietors of the ground on the route, and soliciting from them cessions for the Rail Road; and with such anxious vigilance and such activity and celerity of movement were all their operations, for the location of the site of the Rail Road, and for taking up and forestalling the proprietary rights in the ground, conducted by the agents of the Complainants, and the officers of the United States serving them as engineers, that the party more resembled a partisan corps, meditating or guarding against surprises, on the flank of an enemy, than persons engaged in the ordinary business either of contract or of civil engineering. The Engineers who were employed by the Complainants on that service, were enabled to perform such of the said operations as fell to their share (and they were not confined as these Respondents are credibly informed and believe, to operations within the ordinary sphere of engineers either civil or military, but extended to solicitations and negotiations with the individual proprietors for cessions of their lands,) with so much the more ease and despatch, as most of them had before been attached to the said Board of Internal Improvement, and actually engaged, under the direction of that Board, in the reconnoissances and surveys of the route of the Chesapeake and Ohio Canal, and in making up the memoirs, topographical descriptions, drawings, maps and profiles of the route and plan of the canal as above stated; of which, or of the geographical and topographical details and information derived from which, they made free and frequent use (as these Respondents are further credibly informed and verily believe,) in their locations of the said Rail Road upon the said route: and these Respondents have the strongest reason to think and believe, and do verily think and believe, that the Complainants were urged to the instant commencement of these operations, and to the extraordinary haste and precipitancy with which they pursued them, entirely by the near prospect which they perceived of an organized board of President and Directors for the efficient management of the affairs of the said Canal Company, and by a design to forestall and defeat the expected operations of that Board to secure, by purchase or condemnation, the ground already designated and selected for the route and site of the canal.

(35.) In further confirmation of what these Respondents have already averred, the full and detailed knowledge and notice of the long standing, authentic and notorious election and appropriation of the route and site in controversy for the canal, and of all the steps that had been taken to mark it out and set it apart for that purpose, and how completely it had been incorporated and identified with the whole scheme and plan of the canal ; with which knowledge and notice, the Complainants and their agents and engineers commenced and carried on all their said operations to counteract and defeat these Respondents in the fulfilment of the great public and beneficial ends and object of their institution ; and in order more clearly to illustrate the inequitable use and application made of such knowledge, which instead of serving as a protection to rights the existence of which it communicated, was laid hold of and used to overreach and defeat those rights ; and how unscrupulously in other respects, the very instruments and means dedicated to the advancement and execution of the scheme of the canal, have been converted into the instruments and means of the most deadly attempts against its vital interests, and the interests of the identical parties who had provided those same instruments and means, and lent the aid of them to the Complainants for a very different purpose ; these Respondents say, that of the nine delegates from Baltimore to the said canal convention, in December, eighteen hundred and twenty six, eight of them were prominent and active members of the said meeting at the city of Baltimore, when the project of the said Rail Road was set on foot, and of the committees appointed by that meetin ; and six of those eight, actually attended the said convention, and took part in its deliberations and proceedings ; as will more particularly and at large appear by a reference to the above mentioned proceedings of the said Baltimore meeting and canal convention ; one of them was appointed the President of the said Rail Road Company, at their first election, and has ever since continued so ; and was also appointed by the Executive of Maryland, one of the commissioners to open the subscription books for the Capital Stock of the said canal company ; and others of the said delegates were, it is believed, appointed directors of the said Rail Road Company ; that the Board of Engineers, officiating for the said Rail Road Company, was always and yet is in part composed, and their corps of field engineers was always and yet is entirely composed of officers belonging to the several corps of engineers and of the army of the United States, and of the civil engineers in the service of the United States ; all of whom were lent by the government of the United States to the Complainants, to perform the scientific operations necessary to execute their then supposed plan of a Rail Road ; and, it is understood the Complainants enjoy the services of these engineers at public expense, that any idea of interference between the Rail Road and the canal, was then, and ever after, till the above mentioned intelligence reached and surprised the Secretary of the Treasury in June last, the remotest imaginable from the mind of the Government ; and was necessarily known to the Complainants to be

so : that of the various descriptions of engineers so borrowed by the Complainants from the public service, six had been before employed and actively engaged under the abovementioned Board of Internal Improvement, in the identical reconnoissances, surveys, &c. &c. of the route of the Chesapeake and Ohio Canal, in the years 1824, 1825, and 1826, communicated by the President to Congress, and published as abovementioned : all which, will more particularly, and at large, appear, by reference to the already cited reports of the said Board of Internal improvement, and to the annexed document, certified from the War Department of the United States, containing the roll of the engineers, detached from the public service for the service of the Complainants, with the orders from the chief engineer of the United States, to the three principals among them : and also the roll of the various engineers, in the service of the United States, constituting the said Board of Internal Improvement and its assistants, and the corps of engineers of various classes, actually employed under the direction of that Board, in the various reconnoissances, surveys, &c. &c. of the route of the Chesapeake and Ohio Canal.

(36.) Now, these Respondents, as further advised by their counsel, and further answering, say, that by the pretensions set up by the complainants, in their said bills, to oust and deprive these Respondents of the route and site for their canal, here in controversy, and to intrude the said Rail-Road upon the same, by the retrospective operation and effect of the Rail-Road charter, or of any other statute of Maryland, or of any other State, and in virtue of the pretended authority which the complainants assert and exercise under the said State, and their charter from the same, as set up and asserted in their said bills, there is now here drawn in question the construction of the Constitution of the United States ; and especially of that clause of the same, whereby it is ordained and established, that no State shall pass any *ex post facto* law or laws impairing the obligation of contracts ; and of the several statutes of the United States, to wit : The act of Congress, passed on the 30th of April, 1824, appropriating thirty thousand dollars for the purpose of procuring the necessary surveys, maps, plans, and estimates, upon the subject of roads and canals, &c.—the act of Congress, passed on the 3d of March, 1825, confirming an act of the Legislature of Virginia, incorporating the Chesapeake and Ohio Canal Company, and an act of the State of Maryland, confirming the said act of Virginia, &c.—the act of Congress, passed on the 23d of May, 1828, to amend and explain the two last-mentioned acts of Maryland and Virginia, &c.—and the two acts of Congress, passed on the 24th of May, 1828, the one authorizing a subscription to the stock of the Chesapeake and Ohio Canal Company, the other enlarging the powers of the several Corporations of the District of Columbia, and for other purposes ; under which said clause of the Constitution of the United States, or under such other clause and provisions of the same, as apply to and operate on the case, and under which said

statutes of the United States, or under such of them, and such parts of them, as apply to and operate on the case, these Respondents, in virtue of their aforesaid charter, and of the several statutes and acts of Virginia, Maryland, and the United States, constituting such charter, or altering or amending the same, or anywise relating to the same, and in virtue of the rights and interests thereby, and by the authority of the same, vested in these Respondents, do now here before this court, set up and claim their prior and preferable title, right and privilege, to construct their said canal and its incidental works and appendages, on the precise route and site designated for them as aforesaid, and now in controversy; and to appropriate, by the prescribed modes of purchase or condemnation, the lands and tenements in controversy, on and near that route and site, and through which the said canal is intended to be conducted, and the necessary materials found on such lands, for the construction of the said canal and its incidental works and appendages; and these Respondents do now here set up and claim before this court, under the Constitution and statutes of the United States aforesaid, and in virtue of the rights, interests, and authority, by force of the said statutes, and of the other laws aforesaid, vested in these Respondents, an exemption of such their prior and preferable title, right, and privilege aforesaid, from the operation and effect of the charter granted to the complainants as aforesaid, and of the pretended authority set up, asserted and exercised under the same as aforesaid; and from all diminution and interference, under pretence of such charter or authority. And there is, in like manner, now here drawn in question, the validity of the statute of Maryland, incorporating the Baltimore and Ohio Rail-Road Company, and of the pretended authority so set up, asserted and exercised by the complainants, under that statute as aforesaid, in so far as that statute, or that authority has been, is, or may be held or construed, set up, asserted, or exercised, to operate any revocation, diminution, alteration or interference of, or with the prior and preferable title, right, and privilege, so set up and claimed by these Respondents as aforesaid, or, in any manner, to set up and assert any adversary title, right, or privilege, or the pretence of such in the complainants; the said statute, and the said authority, so set up, asserted and exercised under the same, by the complainants as aforesaid, being so far, and to every such intent and purpose as aforesaid, repugnant to the Constitution of the United States. Of all which matters, these Respondents crave all the benefit and advantage in this answer, that they might, or could have had from averment, or from any form or mode of equity pleading whatsoever.

(37.) These Respondents deny all fraud and combination where-with, &c. without this, that they have herein left unanswered, any matter or thing in the said bills, or either of them contained, which they ought to have answered, &c. Wherefore, they pray to be hence dismissed with their costs in this behalf, most wrongfully sustained, &c.

In verification of the foregoing answer, and of all and singular the averments, matters and things therein contained, and on behalf of the Respondents averred, and of the annexed schedule, as part and parcel of the foregoing answer. These Respondents have caused the proper hand of their President to be hereunto subscribed, and their corporate seal to be hereto affixed, this eighth day of May, in the year of our Lord, one thousand eight hundred and twenty-nine.

C. F. MERCER,
President of the Chesapeake and Ohio Canal Company.

W. JONES,
For Defendants and Respondents.

SCHEDULE REFERRED TO IN THE FOREGOING ANSWER.

1. A PAMPHLET, printed at Washington in 1828, entitled "Chesapeake and Ohio Canal Company," containing the several laws and resolutions of Virginia, Maryland, Pennsylvania and the United States, relative to the Potomac Company, and the Chesapeake and Ohio Canal Company, the proceedings of the companies, &c.

2. Proceedings of the Board of Public Works of Virginia, 1819—20, with the documents and papers accompanying the same, as printed by authority of the General Assembly of Virginia.

3. Message of the Governor of Maryland to the General Assembly, communicating the report of the Commissioners appointed by the conjoint authority of Virginia and Maryland, to survey the river Potomac, &c. with the documents and papers accompanying the same, as printed at Annapolis by the authority of the General Assembly, or House of Delegates, in 1822.

4. Letters from the Governor and Council of Maryland, to the President of the Senate of the United States, communicating the same report, &c. as printed by order of the Senate, January 27, 1823.

5. Report of the committee of the House of Delegates of Maryland, December Session, 1821, on the executive communication relating to the appointment of commissioners with respect to the Potomac river, &c. &c. with the documents and papers accompanying the same, as printed at Annapolis, by authority of the House of Delegates.

6. A bill reported in the House of Delegates of Maryland, January 28, 1823, entitled "An Act to establish the Potomac Canal Company," as printed by order of that House.

7. A law of Virginia, passed February 22, 1823, entitled "An Act incorporating the Potomac Canal Company."

8. Report of the Committee of the House of Representatives of the United States on Roads and Canals, made January 2, 1822, accom-

panied by a report of the Secretary of the Treasury, pursuant to a resolution of the Senate of March 2, 1807, with the other documents and papers accompanying that report, as printed by order of the House. Vide printed reports of 1st sess. 17th Cong. vol. 1. [Report No. 8.]

9. Resolutions of said House of Representatives, moved by Mr. Stewart, March 5, 1822, directing the committee on Roads and Canals to inquire into the expediency of appointing commissioners to examine and report the practicability, &c. of connecting by a canal the Potomac and the Youghiogany rivers, uniting the eastern with the western waters. Vide House Journal, 1st sess. 17 Cong. page 317, as printed by order of the House.

10. Report of the committee on roads and canals of the House of Representatives of the United States, April 26, 1822, with the documents and papers accompanying the same, as printed by order of the House. Vide printed reports, &c. 1st sess. 17 Cong. [Report No. 98.]

11. Report of the committee on the District of Columbia, House of Representatives, United States, on sundry memorials from the inhabitants of Pennsylvania, Maryland and Virginia, praying the aid of the General Government towards the improvement of the navigation of the river Potomac, May 3, 1822, with the documents and papers accompanying the same, as printed by order of the House. Vide printed reports, 1st ses. 17 Cong. [Report No. 111.] For this report (without the accompanying documents) vid. appendix to the report referred to in No. 17 of this schedule.

12. Proceedings of the Chesapeake and Ohio Canal Convention, at its first and second sessions, on the 6th of November, 1823, and 6th of December, 1826, with the documents and papers accompanying the same, printed at Washington City, 1827, by order of the Convention.

13. Message of the President of the United States to Congress, 14th February, 1825, transmitting the report of the Board of Internal Improvement, &c. with the documents and papers accompanying that message, as printed by order of the House of Representatives, among the public documents of that House, at the 2d sess. of the 18th Congress. [Document No. 83.] And also as printed by order of the Senate of the United States, among the Senate's public documents of the session. [Document No. 32.]

14. Map of the country between Washington City and Pittsburg, shewing the proposed routes of the Chesapeake and Ohio Canal, compiled by E. H. Courtney, Lieutenant of corps of Engineers, accompanying the abovementioned report of the Board of Internal Improvement, and tested as No. 16, but not printed with the other documents accompanying the President's said message.

15. Memorial of the Central Committee of the Chesapeake and Ohio Canal Convention and of the Commissioners appointed by the States of Virginia and Maryland, and the United States, &c. to Congress, as printed by order of the House of Representatives of the United States, April 3, 1826, among the House documents, 1st sess. 19th Cong. [Document No. 151.]

16. Report of the committee on Roads and Canals of the House of Representatives of the United States, May 16, 1826, on the resolution of the House, instructing that committee to inquire into the expediency of surveying a route for the extension of the Chesapeake and Ohio Canal, from Pittsburg to Lake Erie, &c. &c. with the documents and papers accompanying the same, as printed among the reports of the House, 1st sess. 19th Cong. [Report No 216.]

17. Report of the committee on Roads and Canals of the House of Representatives of the United States, May 22, 1826, on a joint memorial of the Central Committee, and the Commissioners appointed by Virginia, and Maryland, and the United States, &c. &c. as printed among the documents of the House, of the first session nineteenth Congress. [Report No. 228.]

18. Letter from the Secretary of War, dated April 11, 1826, to the Speaker of the House of Representatives of the United States, in compliance with a resolution of the House, transmitting a report of the Engineer employed in exploring the country between Bedford and Cumberland: with the document and papers accompanying the said letter, &c. &c. as printed by order of the House among its public documents. 1st sess. 19th Cong. [Doc. No. 158.]

19. Letter from the Secretary of War to the Speaker of the House of Representatives of United States, April 29th 1826, in compliance with a resolution of the House, transmitting a report of the engineers employed in exploring the country, &c. between the Deep Creek and Castleman's summits, &c. with the documents and papers accompanying that letter, as printed by order of the House among its public documents, 1st sess. 19th Cong. [Doc. No. 169.]

20. Message from the President of the United States to Congress, Déc. 7th, 1826, transmitting the report of the Board of Internal Improvement, &c. concerning the proposed Chesapeake and Ohio Canal, with the documents and papers accompanying that message, as printed by order of the House of Representatives United States, among the executive documents, 2d sess. 19th Cong. [Doc. No. 10.] and also printed by order of the Senate of the United States, among the Senate's public documents, same session. [Doc. No. —.]

21. The following of the documents accompanying and mentioned in the last abovementioned report, but not printed with the other papers and documents transmitted with the President's last above mentioned message: to wit, No. 1. of the *memoirs* mentioned in General Bernard's letter to Gen. Macomb, p. 9, being Lieut Col. Abbert's report, &c.

The maps and profiles of the first seven subdivisions of the Chesapeake and Ohio Canal, referred to and described in Gen. Bernard's said letter, p. 9, and in the report of the Board describing the eastern section of the Canal, and its first seven subdivisions, p. 41 to 48, and numbered from sheet A 1, to A 14, inclusive. Also the map referred to and described in the same letter and report, as the Board of Internal Improvements, map No. 1, sheet A, No. 15.

22. Report of the Committee of the House of Representatives of the United States on Roads and Canals, January 30, 1827, to whom were referred the memorials and proceedings of the Chesapeake and Ohio Canal Convention, &c. with the documents and papers accompanying that report, as printed by order of the House among its reports at the 2d sess. 19th Cong. [Report No. 90.]

23. Letter from the Secretary of War to the Speaker of the House of Representatives, U. S. January 11, 1828, pursuant to a resolution of the House, transmitting Doctor William Howard's report and plans of the survey of a route for a Canal from Baltimore to the Potomac, &c. with the documents and papers accompanying that letter, as published by order of the House, January 30, 1828, among its public documents of the 1st sess. 20th Cong. [Doc. 58.]

24. Memorial of the Central Committee of the Chesapeake and Ohio Canal Convention to Congress, with the documents and papers accompanying the same, read and referred (January 28, 1828) to the committee of the whole House of Representatives, U.S. &c. as printed by order of the House among its documents, 1st sess. 20th Cons. [Doc. No. 101.]

25. Letter from the Secretary of War to the Speaker of the House of Representatives, U. S. (March 10, 1828) in obedience to a resolution of the House, transmitting the report of the civil engineers, James Geddes and Nathan S. Roberts, of their survey and estimates of the eastern section of the Chesapeake and Ohio Canal, with the documents and papers accompanying that letter, as printed by order of the House among its public documents, 1st sess. 20th Con. [Doc. No. 192.]

26. The maps and profiles (not printed with the other documents accompanying the last mentioned letter, but accompanying the report of the said civil engineers and therein referred to) of the first seven subdivisions of the route of the eastern section to which their said report applies.

27. Letter from the Secretary of War to the Speaker of the House of Representatives of the United States (April 18, 1828) pursuant to a call from the House, transmitting a report, &c. by the said civil engineers, James Geddes and Nathan S. Roberts, on a line of canal from the 'three Sisters,' above Georgetown to Alexandria, with the document's and papers accompanying said letter, as printed by order of the House among its public documents, 1st sess. 20th Cong. [Doc. No. 254.]

28. Report of the committee on Roads and Canals of the House of Representatives, U. S. (January 2, 1828) to whom was referred the memorial of the Central Committee of the Chesapeake and Ohio Canal Convention, and of the commissioners appointed by Virginia, &c. with the documents and papers accompanying the same, as printed by order of the House of Representatives among its reports, 1st sess. 20th Cong. [Report No. 47.]

29. Supplementary report of the same committee (February 11, 1828) with the documents and papers accompanying the same, as prin-

ted by order of the House, among its reports, 1st sess. 20th Cong. [Report No. 141.]

30. Report of the same committee (January 30, 1828) on the memorials of the Corporations of Washington, Georgetown and Alexandria, &c. &c. with the documents and papers, as printed by order of the House, among its reports, 1st sess. 20th Cong. [Report No. 112.]

31. Letter from the Governor of Maryland to the President of the Senate U. S. (February 1, 1825) transmitting, pursuant to a resolution of the Legislature of Maryland, a copy of the law of that State, confirming the act of Virginia, incorporating the Chesapeake and Ohio Canal Company, &c. &c. as printed by order of Senate of the United States, among its public documents, 2d sess. 18th Cong. [Doc. No. 24.]

32. Summary of the subscriptions to the Capital Stock of the Chesapeake and Ohio Canal Company, shewing its aggregate amounts on certain days.

33. The several advertisements of the Commissioners appointed by Virginia, &c. advertising the opening of the subscription books for the Capital Stock of the Chesapeake and Ohio Canal Company, and their calls and postponement of the general meeting of the stockholders.

34. Attested copy of the Bill of Injunction in Washington County Court, 10th June, 1828, by these respondents and the Potomac Company, against the now complainants.

35. Maps (No. 1, 2, 3) and profiles accompanying the same of the survey, location, and plan, of the Chesapeake and Ohio Canal from the Point of Rocks, or a short distance below, to Williamsport; prepared by the engineers of these respondents (since the surveys, maps, &c. of the United States' engineers) for the purpose of putting that part of the route under contract for execution.

36. The printed proceedings of a number of citizens of Baltimore, assembled at that city on the 12th and 19th February, 1827, to take into consideration the best means of restoring to Baltimore, &c. printed by the authority of the meeting and its committee.

37. Documents certified by the Secretary of War, exhibiting the orders or instructions from the Chief Engineer of the United States, to three of the principal engineers detached from the service of the United States for the service of the complainants, and of those employed under the Board of Internal Improvement, in the reconnoissances, surveys, &c. of the route of the Chesapeake and Ohio Canal.

THE BALTIMORE AND OHIO RAIL ROAD COMPANY,
vs.
 THE CHESAPEAKE AND OHIO CANAL COMPANY.

IN CHANCERY, *September 24th, 1829.*

The motion for the dissolution of the injunction heretofore granted in this case, standing ready for hearing, the matter was opened, and the argument commenced by the solicitors of the parties on the 21st July last, and continued until the 6th of August following, when permission was given to add, by way of notes, some remarks upon such new matters as had not been presented in the opening on the part of the plaintiffs. Whereupon a kind of supplemental argument in writing, was prepared on each side, which, with the pleadings and their exhibits, amounted on the part of the defendants to a very large mass, were submitted on the 19th of August last; since which time, I have read the proceedings, and maturely considered the whole case.

It appears that the plaintiffs by their act of incorporation, were authorized, for the purpose of making the contemplated road, to enter upon, use and excavate, any land which might be wanted for the site of their road, or its necessary works, and to enable them to acquire a complete legal title to such land, upon making compensation for it, they were authorized to agree with the owner for the purchase of it, or if he were unwilling or incompetent to sell, or out of the county, in which the property wanted might be, they were authorised to obtain a warrant for having it valued and condemned to them, in the mode prescribed. Under these powers they proceeded to enter upon the lands along the route they have described, as the site of their road, thus located, and to procure a complete legal title to those lands, they agreed with the owners of some parts for a legal conveyance, and had sued out warrants for the purpose of obtaining a legal title to other parts thereof in that way. That neither the Potomac Company, (a body politic in existence at the time the plaintiffs filed their bill, but who have since been dissolved,) nor the present defendants had ever, in any manner, acquired any title to the lands over which the plaintiffs had located their roads, and that these defendants had, notwithstanding, attempted, and were about to obtain a legal title in the mode authorized by their act of incorporation, for the identical same lands so entered upon, agreed for, or about to be condemned by the plaintiffs: by which means they would be enabled to interfere very injuriously with the rights of the plaintiffs, and involve them in great difficulties. To prevent which, the plaintiffs prayed an injunction, which was accordingly granted.

The equity arising out of these facts may be expressed to this effect: where two or more are allowed by law, to purchase and acquire

a title to lands upon certain conditions, and according to a prescribed mode of proceeding, he who does the first requisite act for that purpose, shall not be hindered in his further progress, because the law has thus held out a pledge, that to no one else shall be permitted after that, so to interpose any obstacles, or to arm himself with a formal legal title, by means of which, he may be, at least enabled to litigate and embarrass, if not to overthrow, the right of him whose title had been thus first begun. To refuse an injunction in such a case, against an impertinent and wrongful intruder upon an inchoate title, which at common law is altogether defenceless, would be to stand by and openly tolerate a race for the means of litigation and strife. But the principles upon which this injunction rests, must be familiar to every one at all acquainted with the origin of land titles in Maryland. A title to land may be obtained from the State, through the Land Office, among other modes, either under a common or a special warrant; but when the legal title has been perfected under either, it relates back to the date of the special warrant, or the date of the certificate of survey, by which the particular parcel of land was designated, as that *first* act distinctly manifesting an intention to purchase that land so specified. After the taking of which *first* step towards a purchase, equity forbids any one else from interfering. And if another person does attempt to intrude, he may be restrained in a summary way, by a *caveat* in the Land Office. The object of the *caveat*, as of the *injunction* in this instance, is to prohibit the defendant from obtaining that, to which he can have no just claim; and to prevent him from providing himself with the means of mischievous controversy. Upon these principles I granted the injunction in this case, and I still feel satisfied that it was correctly granted.

The defendants by their answer have not denied, nor even questioned any one of those facts upon which the plaintiffs' injunction reposes. Those facts are all of them admitted, or not being denied, are now to be taken as true. But the defendants, taking an extensive range, have gathered together and condensed in their answer, a great mass of facts and circumstances, showing as they say, the notoriety of the public, and early dedication of the ground in question to the purposes of a canal. And they allege, that there are numerous passes between the tide and Cumberland, where the Potomac breaks through the numerous ridges, mountains and rocky precipices, where it is hemmed in by rocks and high banks with a very narrow space between, which narrow passes being wholly taken up by the rail road, leaves no room for the canal to be constructed on the same side of the river, but at an enormous expense, and which, in fact, produces such difficulties as to endanger their whole project. These allegations and their whole case, as they state, are deducible from a multitude of facts, proceedings, and papers, which they have exhibited as a part of their answer, and all of which they aver to be public and authentic documents. In this manner they introduce a case which as they allege, is so sustained, that the Court might take judicial notice of the facts of which it is composed; and those facts being so noticed, they give rise to a countervailing equity, which avoids,

displaces, and altogether overrules every equity upon which the plaintiffs, can rely ; that the Court may with as much propriety be called on now to dissolve the injunction in their case so made out, as if they had shown a public act of the General Assembly, the operation of which displaced the equity, or was incompatible with the further continuance of this injunction. There are some distinctions and principles which it will be useful to recall to our recollection, and constantly to bear in mind, in order to a more perfect understanding of this case. When speaking in a Court of common law, or of its proceedings and powers, a distinction is always made between *fact* and *law* ; and much is said in the books which treat of their proceedings, of this distinction : and it is shown that, in some instances, *fact* and *law* are inseparably blended. The difficulties with which those courts have to contend, as to where and how the line should be drawn between *fact* and *law*, arises for the most part from the peculiarity of their constitution. They are always constituted of two distinct branches, the Judge and the Jury. To the Judge alone, belongs the right to decide on the law, and the Jury is only charged with the duty of finding the fact. All legal rules involve both law and fact, because the rule itself is either declared to be only applicable to a certain state of facts, or it is one which is assumed as always arising out of some particular facts. Every *law* is then nothing more than the *incidental consequence* annexed to the particular combination of facts—*Ex facto oritur jus*. 1 Stark. Ev : 406. 3 ath. 36. In speaking of the proceedings in a Court of Chancery, the same distinction is made and exists precisely in the same way and to the same extent in all respects. The phrase is changed and nothing more. We do not here speak of the distinction between *fact* and *law*, but of that between *fact* and *equity*, excepting only so far as a reference is made to the different constitution of the tribunals ; the sense and meaning of the two expressions are exactly the same in all intents and purposes. And if the Chancellor were to have associated with him a jury for the purpose of finding the facts, leaving him only to decide upon the equity, the same kind of difficulties would arise, and as often in this Court, as to the proper distinction between fact and equity, as between fact and law in a court of common law. In the case of Salmon vs: Clagett, I endeavored to explain the principles by which this Court had been, and would continue to be governed in relation to motions for dissolving injunctions. I stated that there was, or, in many cases might be, a very clear distinction drawn between the *facts* composing the case, on which the injunction rested, and those making up the whole case of the bill on which the relief was prayed, and the case presented by the answer, including as well the facts set forth in avoidance of, as those which are responsive to the bill. In a word, that as the equity arising out of each combination of facts essentially varied, it became necessary to determine, what was that combination of facts to which the Court must confine itself on a motion to dissolve the injunction : and I then declared, that it must confine

itself exclusively to the case, or combination of facts set forth in the bill out of which the equity of the injunction arose, and to the answer of the defendant to these facts. Through the whole of the explanation of this subject in that case, I took it for granted, that the distinction between *fact* and *equity* was perfectly understood and constantly attended to, because it was a common, substantial and elementary one. I was the more particular in the explanation of the peculiar and often circumscribed nature of the case on which the injunction rested, because I there showed, the loose and general expressions of the English books upon the subject, however well adapted to the course of proceedings in that country, by no means conveyed a correct notion of the principles by which this Court is governed, and because I perceived that although the New York adjudications, which are highly respected here, had in some cases laid down a rule as it prevails here, and had declared it to be according to the reason of the thing, 1 Hopk. 276. 4 John. C. Rep. 323, and also because the no less highly reputable decisions of Virginia had sanctioned a course of proceedings in that State, which was wholly unlike ours, and as it seemed to me unsuitable to the constitution of this Court, 1 Hen. and Mun.

In this case much has been said about the injunction granted by the County Court of Washington. That case, as I have repeatedly declared, has no sort of necessary connexion with this. The wrong complained of here, is the fact of the defendants' endeavoring to purchase certain land which the plaintiffs were about to purchase, and to which they had previously begun to acquire a legal title. Now I have not perceived from the pleadings in the case, or been able to gather from the arguments, that this matter of controversy is in any way involved in that suit, or that any judgment I can pronounce in this case, can in any manner bring this Court in collision with the Washington County Court. There was, in truth, no necessity to have made the slightest allusion to the suit in that County Court. But since that suit has been fully and specially referred to in this bill, I will here take occasion to remark, that this Court has been thus made to afford an example of the distinction. I endeavored to illustrate in the case of Salmon vs. Clagett, between the case on which the injunction rests, and the whole case of the bill upon which it prays relief. Here, the plaintiffs state themselves to be purchasers who had taken the first requisite steps towards completing their purchase, and were going on to do so. When these defendants stepped in, and were attempting to take the bargain from them, or to put themselves in a condition to contest their complete title, when it should be obtained : so far the facts were necessary to this injunction. The plaintiffs then introduced all the circumstances of the County Court, injunction and suit ; now those facts could be of no service to them as a basis for the injunction asked for here, but at the final hearing they might have been of use, as a reply to a charge of laches in not going on with due diligence to perfect the legal title they had begun, had it been alleged in the answer that they were unworthy of belief,

because of any such negligence, since that County Court injunction would have sufficiently accounted for the delay, and prevented its being thence inferred that the plaintiffs had tacitly abandoned their incipient title. For that purpose, and as showing why the plaintiffs should be restored to those advantages which they ought to have been allowed to derive from their first step towards a complete title, when that injunction, if at all, shall have been withdrawn so as to allow them to proceed, are the only modes in which any thing that is said about the County Court suit can have any bearing upon this case. And, in this way, it furnishes an example in this suit of the difference between the case of the injunction and that case: every part of which might have been necessary to give a sufficient foundation for the relief prayed. In the consideration of a motion to dissolve an injunction on the coming of the answer, it is essentially necessary that these distinctions should be constantly borne in mind, and that we should be every way careful not to confound the equity and merits of the case with that combination of facts of which the case is composed; and which gives rise to the equity upon which the injunction reposes. These distinctions are our chief or only guides through the mazes of the numerous and various allegations, averments, and arguments, which each one of the parties may introduce into the pleadings, by which he exhibits his case to the Court. In a Court of common law, as regards the right of judge and jury, there may be often much difficulty in distinguishing between *fact* and *law*; but here and in cases of this kind, the distinction between *fact* and *equity* being deduced from the pleadings is more easily drawn. The allegations of the pleadings, so far as regards *facts*, are offered as by a witness giving testimony. The averments of fact in an injunction bill are sworn to as by a witness to cause the Court to believe in their truth; and so believing them to perceive the incident equity arising therefrom which will authorize the granting an injunction. And a defendant is bound, and may be forced to make answer on oath, to all the facts so stated in the bill: he responds in many respects as a witness, and his answer is evidence of facts, not of equity. Consequently, if the pleadings in Chancery are taken as they certainly may be to this purpose, as the declaration of witnesses testifying to facts, the distinction between what must be regarded as *fact* and not as equity in a bill or answer, will be seen in a clear and striking point of view. A party speaking only as witness cannot be said to alter, or cause belief in any principles of equity by making oath to their existence, since they are annexed to and made incidents beyond his control, of certain combinations of facts, and the court is bound in the most emphatic sense to take notice of all such principles without proof. Therefore, on a motion to dissolve an injunction, the best test of what are properly averments of facts in a bill or answer, is whether they are such matters as a witness might be called to prove, or the truth of which must be established by evidence, to enable the Court to act; if they are not, then they are either sheer principles of equity, or some of those public and established facts, such as the

constitutionally appointed day of the meeting of the General Assembly, or the like, of which the court is bound to take judicial notice, without any proof whatever.

The defendants, in support of the position that their case is substantially made up only of such matters of which the Court is bound to take notice, relied upon 1 Stark. Ev. 166. But the subject there treated of, can have no manner of relation to this case as it now stands upon this motion. Here the position taken that no proof of any kind can be required; there the inquiry is concerning the public written instrument of evidence, the forms with which they must be clothed to entitle them to be received as such, and of the nature of the matter of which they may be deemed sufficient proof. No one will question the soundness of the general principle there laid down. It amounts to no more than this: that the acts of the whole Government, or any one of its departments, may be shewn by giving in evidence those papers and documents which are the usual and established forms by which it exercises or manifests the powers belonging to it. In England the King alone declares war; and, therefore, a royal proclamation to that effect is there held to be sufficient evidence of a state of war: in this country Congress alone can declare war; and hence, here, no instrument short of an act of Congress can be deemed sufficient evidence of the United States having placed themselves in a state of war. This principle of evidence may, perhaps, be considered as alike applicable to all countries. But the shewing that certain papers and proceedings may be used as evidence, for any purpose, by no means sustains the position that the Court is bound to take notice of them as public and authentic documents, 2 Camp. 44. The general principle, as illustrated by the authority relied on, applies only to the inquiry what is proper and sufficient evidence of certain facts. The question here is, not as to the nature or the instruments of evidence, but whether the case or the facts are such of which no proof whatever is required, because of their belonging to that class of matters of which the Court is bound to take notice. The position taken by the defendants repudiates all proof. They aver that their case is made up of that which gives them a full dispensation from the necessity to produce proof of any description; and, therefore, they invite the Court so to look upon it, to sanction the proof of every part of it, and to act accordingly.

I take it to be clear, that, as to all those facts and circumstances of which the Court is bound to take notice on a motion to dissolve an injunction, the parties stand before it in the same situation as that in which a dissolution is asked for, on the ground that the facts set forth by the bill gives rise to no equity upon which an injunction ought to be granted. It is a well established principle in equity as well as at law, that a plaintiff can only obtain relief upon the strength of his own claim, and not upon the weakness of that of his adversary; and, therefore, if it should appear that the facts as stated in the bill, looking to it alone, gave rise to no equity, it is very certain that the injunction would be dissolved, whether the defendants

had answered or not, or however imperfectly he might have answered. Let it then be supposed that an injunction had been granted to restrain the making of a canal, or the doing of any other act, under an impression that the defendant had been clothed with no authority to do the act complained of, and it should be afterwards shewn to the Chancellor that a public act of the General Assembly, of which he was bound to take notice, had fully authorized that very act. It is certain that he would, in such case, immediately dissolve the injunction even without an answer, or without regard to the imperfections of the answer; consequently, if the exhibits of these defendants be in truth as they have alleged, such public and authentic documents as the Court is bound to notice, they might, by merely reading them to, or reminding the Court of them, have obtained all the benefit from them which they could have had in any other way. If taken altogether, or separately, they give rise to such an equity as is incompatible with that on which the injunction rests; it must be dissolved. This might be done by the defendants without making any answer, but a defendant may in general insist on any matter, by way of answer, which he may take advantage of by plea or demurrer. Here the answer relies expressly upon that countervailing equity arising out of the combination of facts which it has set forth in avoidance of the plaintiffs' case, and, therefore, if those facts are such as the Court is bound to notice, their being couched in the form of an answer, cannot release the Court from that obligation, nor can they be thus rendered in any manner less acceptable to the Court, or less available to the plaintiffs, than if they had been shewn in any other way.

It is laid down as clear law that no evidence can be required to prove the existence of a fact which must have happened according to the constant and invariable course of nature, or to prove any general law or other public matter of which the Courts are bound to take judicial notice. An act of Assembly relating to a public highway, is a public act of which they will take notice, but of private acts they take no notice, 1 Stark. Ev. 163, 400. They take notice of the order and course of proceedings in each of the two Houses of the General Assembly, 1 Saund. 131, but not of their journals or votes and proceedings, 1 Ld. Raym. 15, nor are those journals when proved evidence of any facts stated in the resolutions or reports of committees, which are not a part of the proceedings of the House, 1 Stark. Ev. 167. The Courts of Justice of the several States must take notice of all public acts of Congress, even including (as may be admitted in this case) those which relate exclusively to the municipal affairs of the District of Columbia, but they are not bound to notice any foreign law, or law of any other State of the Union. The acts of the other States of the Union, to be admitted even as evidence, must be authenticated according to the act of Congress. The Courts of Justice are also bound to take notice of the civil geography of the State, as of the counties, districts, and cities, established by the State Government, and also of the districts and ports, which are the divisions made of it by the Federal Government; but they do not

notice the local situation of places within particular counties, or the distance of counties from each other, 4 Bar. and Ald. 243. And, although they will notice to extent of ports, 1 Stra. 469, yet the straitening of a port by building too far into the water, where ships and vessels might have formerly ridden, is a matter of which they cannot take notice, but it is a question of *fact*, to be determined by a Jury upon evidence, Haig. Tr. 85. As regards the subject now under consideration, the obligation of the Courts of Justice to take notice of various matters and things, extends thus far and no farther. It only remains to inquire, therefore, whether those matters which the defendants have condensed into the form of an answer, and proffered to the consideration of the Court, are some of those of which it is bound to take judicial notice. The line of road to be formed by the plaintiffs, and the canal to be constructed by the defendants, are both of them declared to be public highways; and, therefore, the several acts by which they have been incorporated, are public laws of which the Court is bound to take notice. The acts of Congress, and of the other States of the Union, in relation to those two public highways, may also be noticed on the ground that they have been called for, recognized, and adopted, by public laws of this State, which have actually taken effect. But no private act of this State, nor any legislative enactment of any other State, which has not been thus expressly invoked, and in a manner introduced into the body of our public statute law, can be noticed by this Court; and, therefore, none of the acts of the Legislature of Virginia, or any other State, passed prior to, or which have not been adopted by those acts of ours, of 1826, ch. 123, and 1824, ch. 79, by which the plaintiffs and the defendants have been incorporated, can be now noticed. It is also certain, that all the Journals, Reports of Committees, and every thing else, found among the proceedings of any legislative body, must, upon the present occasion, be laid aside as matters which the court cannot now notice. As to the multitude of private papers, referred to in the answer, such as proceedings of sundry meetings of respectable people, who gave themselves the name of conventions, private letters, and the like, as it has *not* been very seriously contended, that they should be noticed, and considered as public and authentic documents, in any respect, so as to affect the rights of property any where, or to any extent, I may, without scruple or hesitation, throw aside the whole mass of papers of that description, at least for the present, as utterly unworthy of being judicially noticed, without proof, for any purpose whatever.—But the defendants in their answer say “that at the Point of Rocks where the Potomac intersects the ridge of the Catocin Mountain, and where the pretended route of the said Rail-Road is described by the complainants, in their said bills to strike the Potomac river; there is one of those narrow passes in the actual route and site of the canal, as *officially* and definitely selected, surveyed, and laid down as aforesaid, which presents no choice of ground for the canal, but where for a considerable distance up the river along the foot of the mountain and its spurs, the canal

is confined by the nature of the ground within certain primeval and immoveable barriers, *as is more particularly shown and illustrated by the topographical descriptions, maps and profiles of the Engineers, herewith exhibited and above referred to.* Through the whole of this pass, the space between the jutting and precipitous rocks on the one hand, and the river on the other, is so narrow, that in order to obtain the proper and necessary breadth for the canal and its towing path, a solid and wide wall must be constructed in the river, and if the canal be intercepted and cut off by the Rail-Road, or otherwise from that single route through this pass, it must be completely intercepted and cut off from the whole of its route above, and be either entirely stopped and defeated, or compelled to the precarious, dangerous, and enormously expensive, and every way inconvenient and burthensome expedient of crossing to the opposite side of the river, on an aqueduct, and then in order to regain its route to its western terminus, of recrossing the river on another such aqueduct, at such unknown and uncertain point above, certainly not lower than Cumberland, as where it may please the complainants to allow them verge and space enough." From this, the defendants argue, that as by an act of Congress, which the courts of justice are all bound to notice, the President was authorized to order surveys to be made of the most suitable routes for roads and canals, that therefore this court must take notice, that the President did execute that law, by ordering surveys to be made, that one of those surveys was made expressly for this canal, as a location of its route, and as a first step towards an absolute appropriation of the land, along that route, to its use, that the maps and profiles now shown, are those made to exhibit the result of that survey; and that those maps and profiles clearly show that the canal has been either altogether intercepted and cut off, or most illegally and ruinously turned aside from its rightful and destined route, by the Rail-Road. This is drawing consequence from consequence, and piling notice upon notice, to a great extent and height indeed. The act of Congress as a public law, it is true, must be noticed, and because the law presumes that every officer has properly performed his duty until the contrary appears, it must be admitted that the President did order some surveys to be made, as required by that public law; but there is no adjudged case, or principle of law, which declares it to be the duty of the courts to take judicial notice of the execution of any public statute whatever. If they were bound to take notice of the manner in which this public act of Congress had been executed, then, upon the same principle, they would be bound to notice the manner in which every public statute was executed. There are many public statutes requiring acts to be performed, by Justices of the Peace and Constables, but to take judicial notice of the manner in which such officers had executed a public statute, and so to admit their *ex parte* proceedings to affect the rights of property, would be absurd and mischievous. The various modes in which the public statutes are carried into effect, by the executive officers of our Government, are, in principle and in law,

all proceedings of the same character; they are mere *facts*, and are not some among those public proceedings of which the courts of justice are bound to take notice; consequently, when, where, and how those surveys were made, as authorized by the act of Congress, and the topographical maps and profiles exhibiting the results of any of them, are all matters of fact, to be shown and established by proof; and even when they shall have been so established, it will remain a question, how far they can be received even as evidence, to affect the interests of any one, who was not a party to their being made, or who had not, in any way admitted their verity and correctness; abstracting then every thing from the case of the defendants, of which the court cannot take notice; and there remains nothing left to them, with which they can assail the equity of the plaintiffs, except their several acts of incorporation, but with these alone, they have attempted to maintain their ground.

I have read the act incorporating the plaintiffs, and also that incorporating the defendants, and compared them with each other. These two bodies politic are entirely distinct in all respects; there is not one single sentence in the acts by which either has been incorporated, which has the most remote allusion to the other, nor does the sense of any expression contained in either of their acts of incorporation, in the slightest degree, indicate that there probably may, or possibly can arise any jarring between their respective franchises, or collision of their several interests in any way whatever. From all or any thing, apparent from the face of those legislative enactments, there is no room to infer that each one of these two corporations may not proceed in all their operations, without the least interference with the other. If then, upon the face, and according to every fair reading of these several acts of incorporation, all is harmonious between them, the discord can only have arisen from the manner of executing the one or the other, or both of those laws, and in no other way; and that this controversy between these parties has only originated in that way, appears to be admitted by the defendants themselves.

In their answer they say that "according to the complainants' own showing, and the facts are otherwise true and notorious, they have the choice of two or more practicable routes for their Rail-Road, without any interference with the canal, or connexion with or even approximation of the river; the different routes only presenting some differences in the comparative labor, and expense of construction, and these compensated, if they occur with any considerable increase on the more northern route, originally proposed for the Rail Road, by the advantages and savings from directness of course and shortness of distance, as the principal and leading personages, both among the original projectors and promoters, and the present managers and proprietors of the Rail Road, have repeatedly averred and publicly contended, the principle and the operation of the lifting power of stationary steam engines, by which the Rail Road overcomes ascents and gains new levels, admit of an

infinitely greater diversity and extent of application than that of the canal, circumscribed and limited as it is by water levels, and are perfectly practicable and convenient, and within the ordinary compass of that power, either to overcome all the necessary ascents on the more northern and direct route first proposed for the said Rail Road, or, if what the complainants designate the southern and circuitous route be preferred by them, to assume, with ease and convenience, a higher level than the canal on that route, and leave the canal ample verge and room between the Rail Road and the river: there is no necessary or proper connexion or dependence between the Rail Road and the river, either extrinsically as regards the construction, appendages, and uses of the Rail Road, or relatively as regards the purposes of intercourse, trade, and commerce which the Rail Road was designed to subserve: Whereas the river is, as it were, the life-blood of the canal, and continual access and frequent communication from one to the other, are inseparable from the very idea of the canal. Here it is distinctly alleged, by the defendants, that the injury they complain of, has arisen altogether from the location which the plaintiffs have given to their road under this act of incorporation—that is, not from the law itself, but from the execution of the law.

The defendants insist, that, by virtue of their grants and franchises, they have a priority of right to the choice and selection of the route and site of their canal along the margin and bank of the river Potomac. They mainly and in every way rest upon this priority of right to a choice of routes. If it exists at all, it must be founded upon the various facts and circumstances as shewn by them, when taken in connexion with the acts of the General Assembly, by which they have been incorporated, or it must be based upon those acts of Assembly alone. But if, as in the first supposition, its foundation is composed of those facts, taken with the law, then it certainly cannot avail them upon the present motion, because it has been shewn those facts are none of them of that character of which the court can now take notice and act upon. Take the other supposition, and let their alleged right be admitted to have been expressly given by a public law, of which the court must take notice, even then they cannot avail themselves of it upon the present motion, because they have been deprived of it, as they themselves state, not by the act itself by which these plaintiffs have been incorporated, but by the manner in which that law has been executed, which *mode* of executing the law is clearly a matter of *fact*, of which this court cannot now take notice. I do not understand that the defendants contend for an arbitrary and whimsical right of choice, which, without regard to their own real interests, may be capriciously turned against the plaintiffs or any others, merely for the purpose of intercepting their line of operations. They certainly cannot claim such a right with any design of using it for the very same evil purposes of which they themselves now complain; it must be, therefore, that the right of choice for which they contend, is one which in its exercise is to be governed by fairness, justice, and equity. If this be the kind of right for which they contend, and

none other could be sanctioned by a Court of Equity, then it is evident that the court has not, as yet, been furnished with the means of forming any fair and correct judgment upon the subject. It has heard, so far, only the allegations of one side, and that, too, without any proof in support of those allegations which it can allow itself to notice and act upon. The bill and all the allegations of the plaintiffs are perfectly silent in respect to this right of choice as now claimed by the defendants. The claim and every fact relating to it make their appearance for the first time in the answer of the defendants. The plaintiffs could not be, nor were they expected to come, prepared for a vindication of their rights, so far as they are implicated by this claim, their case is shewn by their bill, either as necessary to an injunction or to relief, called for no such disclosures as the defendants have set forth respecting this claim of a right of choice, and consequently every thing relating to it is entirely new matter, advanced in avoidance of the plaintiff's case, and concerning which they have yet had no opportunity to shew any thing on their part. Justice and equity, therefore, do most manifestly require that the injunction heretofore granted upon an equity which the defendants have been unable otherwise to controvert, should be continued until the validity and extent of the claim of the defendants can be examined and ascertained upon surveys and evidence which each party may be allowed to make and produce, and from which the court may be furnished with the means of determining whether or not these two apparently harmonious acts of incorporation have, in reality, by the improper execution of one of them, been brought into ruinous conflict with each other.

If, upon an order of survey authorizing these parties to lay down their respective pretensions in the usual manner, and on the return of such topographical maps and profiles as may be specially directed, if required, the fact appears that the location of the Rail Road does deprive the canal of its most suitable and advantageous route, then the question will fairly arise and be correctly presented to the court, whether the defendants have a priority of right to the choice, and selection of a route for their canal, or not. The extent of the interference and the nature of the collision between these two bodies politic will then and in that way, be clearly and properly presented, according to the shewing and proofs of both parties.

Whereupon it is on this 24th day of September, 1829, *Ordered*, That the injunction heretofore granted in this case be, and the same is hereby, continued until the final hearing or further order.

THEODORICK BLAND, *Chr.*

True copy :

• Test, RAMSAY WATERS,

Reg. Cur. Can.

THE CHESAPEAKE AND OHIO CANAL COMPANY

vs.

THE BALTIMORE AND OHIO RAIL-ROAD COMPANY.

To WASHINGTON COUNTY COURT, }
Sitting as a Court of Equity. }

This, the bill of complaint, and injunction of the "Chesapeake and Ohio Canal Company, and of the Potomac Company," respectfully shews, that, in the due pursuance and execution of the concurrent acts and compact of the States of Virginia and Maryland, and of the United States in Congress assembled, for incorporating the said Chesapeake and Ohio Canal Company, subscriptions have been opened for the stock of the said Company, consisting of six millions of dollars, divided into sixty thousand shares, of one hundred dollars each, whereof more than one fourth, and of the major part of the said stock has been duly subscribed, and among other of such subscriptions, the Secretary of the Treasury of the United States, for and in behalf of the United States, has duly taken, in pursuance of the act of Congress for that purpose enacted, 10,000 shares, one million of dollars; the State of Maryland, 5,000 shares—500,000 dollars; the Corporation of Washington, 10,000 shares—1,000,000 dollars; the Corporation of Georgetown, 2,500 shares—250,000 dollars; the Corporation of Alexandria, 2,500 shares—250,000 dollars; and divers individual subscribers in different parts of the United States, between 5,000 and 6,000 shares—500,000 or 600,000 dollars: that, in virtue of these subscriptions, the said company has become duly organized and incorporated as a body politic or corporation aggregate, according to the terms and condition of its charter, so established by concurrent acts and compacts as aforesaid: that, in the further pursuance and execution of the said charter, the Commissioners duly appointed by the Executives of Virginia and Maryland, and the President of the United States, have called a general meeting of the said subscribers on Friday, the 20th day of the present month of June, at the City Hall, in the City of Washington, for the purpose of electing a President and six Directors, for conducting the undertaking of the said canal, and managing the said company's business, of which call, and of the time and place of meeting, the said Commissioners have given due notice by advertisements in the public papers, as required by the said charter, at which meeting the said company will proceed to make due election of the said President and Directors, who, immediately upon their election will proceed to cause the site of the said canal to be definitively surveyed and laid down, and the work to be commenced without delay, and these Complainants aver, that there is no wish, intention, or motive whatsoever, for the said company, or the said President and Direc-

tors to delay, for an instant, the commencement and prosecution of the work ; but that it is their true and *bona fide* intention to proceed in the same with all practicable despatch and energy, That the said Potomac Company have duly assented to the said charter, and all the provisions of the same, and have duly empowered their President and Directors to surrender their charter, and convey, in due form of law, to the Chesapeake and Ohio Canal Company, all the property, rights and privileges by them owned, possessed, and enjoyed, under their said charter, which surrender the said Chesapeake and Ohio Canal Company are ready and willing to accept, and the same will be speedily made and accepted ; in the mean time the said Potomac Company retaining its corporate existence and capacity, and these Complainants further shew, that, by the terms of their said charter, the exclusive use and appropriation of the river Potomac, and all its tributary streams, and of the adjacent lands in Maryland and Virginia, and the District of Columbia, necessary for the construction of the said canal, and its incidental or auxiliary works and appendages, are vested in the said company by indefeasible grant and compact, from the concurrent authorities of the said States and of the United States, and that such grant is not only entitled to all the immunities and privileges of priority in point of time, but is founded on higher and more irrepealable sanctions than any other grant or charter that can possibly interfere with it, inasmuch as the said company is not only entitled to protection under the Constitution of the United States upon the general faith and obligation of contracts, against any legislative infringement of their grant, but, as no State or sovereignty whatsoever is competent, by any legislative act, or other erection of power whatsoever, in any manner to change, alter or modify the terms of the said grant, or the rights and privileges thereby conferred without the express assent and concurrence of all the three sovereignties by whose authority and compact the said charter was established : that the construction of the said canal, as described in the said charter, has been for a long time, and before the enactment of the said charter, and since the enactment and before the actual organization of the said company, by means of the said subscriptions as aforesaid, a concern of high public interest and importance to most of the States, and in particular to the Congress of the United States, and to the States of Virginia and Maryland, and the citizens thereof, insomuch that, in the year 1821, preparatory examinations and surveys were instituted by the Legislatures of the said two States, by Commissioners appointed under their authority, in order, among other things, to report the most practicable and advantageous means of carrying that great scheme into effect, and to the report of these Commissioners your Complainants refer : And, after the enactment of the said charter, and before the said subscriptions were filled up as aforesaid, the Congress of the United States authorized and directed the route of the said proposed canal to be surveyed and laid down by the Board of Engineers for internal improvement, &c. in pursuance of which authority and direction the President of

the United States caused official surveys and estimates of the cost of the said canal to be made by a brigade or detachment of the said Engineers, whose report in detail was communicated by the President to Congress, in December, 1826, since which fresh inspections of the same route, and further and more accurate estimates of the cost have been made by other Engineers under the authority of Congress, whose report and estimates have also been communicated to Congress by the President, this last inspection and estimate having been suggested by, and instituted at the request of a highly respectable Convention of Delegates from several States, both East and West of the Alleghany mountain, assembled at Washington, in conjunction with Delegates from the District of Columbia, and styled the Chesapeake and Ohio Canal Convention, being a convention delegated from those States and District, expressly for the purpose of concerting measures to fulfil the earnest hopes and wishes of the People for the execution of this great and beneficial undertaking : to all which surveys, reports, estimates and proceedings, preparatory and consequent thereto, your Complainants pray that due reference may be had ; and these Complainants further shew, that the said Engineers, in execution of the duties and authority of their said appointment, have, among other things, surveyed and made an official report and return of their survey of the route of the said canal from Pittsburgh, in Pennsylvania, to a point in Alleghany County, in this State, near Cumberland, and thence to tide water in the District of Columbia, which survey with the other documents accompanying the same, is duly filed and recorded in the Department of War, and with more recent estimates made by the other engineers as aforesaid, was communicated by the President in a public message to Congress, as aforesaid, and, constituted the principal public evidence of the practicability, economy and expediency, of the measure, upon which Congress at their last session, passed the act authorizing said subscription by the Secretary of the Treasury : and these complainants are well informed, have good reason to believe, and do verily think and believe, that the site and route of the said canal and of its feeders and auxiliary works, as surveyed and laid down as aforesaid, will, and are *bona fide*, intended to constitute the main site and route of such canal, feeders and other works, with little or no deviation now known or anticipated ; though it may possibly and probably happen that when their engineers come to lay down the practical working plan of the work, some slight variations in the detail may be necessary, but no material variation from the main route or site already surveyed and ascertained, as aforesaid : At any rate, these complainants insist, and are well advised, that they have a good and indefeasible right to insist, that they have the clear and absolute pre-emption and election, under their said charter, of such route and site, in preference to all other persons and corporations, and companies, whatsoever, that they cannot be rightfully restricted in their choice, of the most eligible route, if more than one be practicable ; and that within the legitimate sphere and compass of such their choice and election, no other person, corporation, or

company, whatsoever, has any right or authority to forestall the first choice, and throw upon these complainants the necessity to adopt any particular one, of any number of possible routes, if there be more than one, far less, to oust these complainants of the only practicable and convenient route : And these complainants further shew, that certain persons, styling themselves the Baltimore and Ohio Rail Road Company, incorporated by the act of Assembly, passed for that purpose, by the General Assembly of Maryland, on the 28th day of February, 1827, (to which these complainants refer) and their agents and attornies, have, under pretence of exercising the corporate authority and privileges granted to them by their said charter, caused a route for their said proposed rail road, to be surveyed and laid down, following the margin of the river, or the meanders of the low grounds near the margin of the river Potomac, that the route and site of the said road, so surveyed and laid down, directly and necessarily interferes with the route and site, necessary and proper for the said canal, and its incidental works, and which the said Baltimore and Ohio Rail Road Company (who these complainants pray, may be made defendants to this bill,) their agents and attornies had due notice, and well knew, were intended and were necessary to be located on the same route and site, so surveyed, for the said road, that in many of the most important parts of the said route, the said defendants have located their said road by their said surveys, on the only ground where it is at all practicable to conduct the said canal, on the Maryland side of the river, on which side all the way from Cumberland to tide water, they knew the said canal was intended to be constructed, and had been so defined in the said official surveys and estimates, all of which assumed that route as their basis ; that inasmuch as the choice of routes for the canal is necessarily limited by water levels and other circumstances, and as the route for the said road admits of an infinitely larger scope of choicc, if it be not in the nature of things indefinite, these complainants have good reason to conclude, think and believe, and indeed, are credibly informed from other sources, and do verily think and believe, that the site and route so chosen, and surveyed for the said road, have been so chosen with a preconcerted design and deliberate intent to forestall and oust these complainants of their chosen and designated route on the Maryland side of the river, and that the defendants and their agents have given out and contended that these complainants were entitled to no priority in the location of the site of their canal ; but that whichever of the said companies should happen first to get hold of any piece of ground, by contract or condemnation, in the proposed route of the canal, would be entitled to appropriate it to the exclusive use of such company : that the said defendants, in pursuance and execution of this unjust and unlawful purpose, have already within the last three or four days, just as they apprehended these complainants were about to commence active operations upon a large scale for the completion of the canal, obtained six conveyances, for several contiguous tracts of land in the neighbour-

hood of Sharpsburgh, in the county of Washington, which are filed with the clerk of that county to be recorded, and to which these complainants refer : that three of the said conveyances purport to contain calls or boundaries, which shew that the lands so conveyed lie immediately along the margin of the Potomac, and these complainants believe, that all six of the tracts are contiguous, and would shut out the said canal in that quarter, not only from pursuing the route so surveyed and laid down, for the same as aforesaid ; but, from any practicable route whatsoever, by which it could pass below the said tract, that the defendants and their agents are actively employed and now actually engaged in endeavours to forestall and take up either by contract or condemnation, the whole or greater part of the margin of the said river and its adjacent banks and low grounds, throughout its whole line, through the counties of Alleghiany, Washington and Frederick, and that they are hastening on the consummation of this purpose, in order to forestall and frustrate such active and efficient measures, as it is notoriously expected and believed the President and Directors of the Chesapeake and Ohio Canal Company, will immediately upon their election, in the course of ten days from this time, adopt, for the appropriation of the ground designated by the said surveys of the Engineers, under the authority of Congress, as aforesaid, for the site and route of the said canal, and indispensably necessary for the completion of the canal upon the plan suggested by those surveys, or upon any practicable and convenient plan ; and these complainants are credibly informed, and do verily think and believe, that the existing survey and location of the said road, as far below Cumberland as it has already been made along the whole line of the river Potomac, through the three counties aforesaid, have been made expressly and directly with a view to intercept and prevent the construction of the said canal, on its said designated and surveyed route ; and that if not already done, the location of the said road will be extended upon the same plan of exclusion as low down the river as the mouth of Seneca in Montgomery county. These complainants know not certainly what other contracts or agreements the defendants have made with the proprietors of lands on the proposed route of the said road, besides the said conveyances already recorded as aforesaid, but have good reason to believe, and do verily think and believe, from good and credible information, that they are exerting themselves to the uttermost, by their agents, to make other contracts, on a similar plan, and for a similar purpose, with the other proprietors ; and that they have obtained several warrants from Justices of the Peace in two, if not all three of the said Counties, for summoning juries of inquest, for the condemnation of such of the said lands as belong to persons unwilling to abet the scheme of defeating the locations already made for the benefit of these complainants ; and that such condemnations are directed to all the most difficult passes on or near the margin of the river, which, being once pre-occupied and forestalled, leave no other practicable and convenient, if possible route, for the Canal ; and

that their entire location of their said Road, as surveyed and proposed to be carried into effect by means of such contracts and condemnations, is calculated and intended to have the effect, and, if permitted, must necessarily have the effect, of expelling the said Canal and all its incidental works from the route and site so designated and surveyed for the same, as aforesaid, and from any other possible route on the Maryland side of the river; and, indeed, leaving it extremely doubtful whether any practicable route at all could be found on the other side; and, if practicable at all, making it certain it would be vastly and incalculably more expensive and inconvenient; and, in all events, reduce these complainants to the enormous expense and delay of new surveys and estimates for nearly the whole length of the Eastern section of the Canal. And though these complainants are well advised and believe that the then essential right to maintain the present location of their Canal, or to elect any other, is paramount and indefeasible, both at law and equity; and that the proceedings of the defendants to frustrate that right, as aforesaid, would be merely nugatory and void; yet, such is the peculiar nature of the undertaking in hand, that no after remedy could possibly compensate these complainants, or the public, for the delay and inconvenience of a contested possession, if the defendants are once admitted into an adverse possession of the entire line in dispute, and left free to hold it under contest, the most precious and possibly the most indispensable time for the completion of the work may be consumed in litigation; till, at length, their charter may be forfeited by lapse of time, according to its prescribed limitations: that preventive and summary justice is the only justice that can be administered in the case; and if the defendants really desire to prosecute with effect their plan of a Rail Road, it may be expected that they would equally desire the question of right (if such question can be made in the case) to be decided in the more summary form of the preventive remedy, by injunction. To the end, therefore, that the defendants may true and perfect answer make, &c. &c. particularly that they may answer and discover what surveys and locations of the said Road they have made or caused to be made; how and at what points they interfere with said designated and surveyed route of the Canal, or with such route of the same as is the most practicable and expedient: that all the said conveyances, so filed for record, as aforesaid, and all other conveyances and condemnations of land, if any, heretofore made, or hereafter to be made, by the defendants, or by their agents, or at their request, in pursuance of such surveys and locations, may be annulled and set aside: that the said defendants, their agents and attornies, and all persons acting by their authority, or in their behalf, may be strictly prohibited and enjoined from making any contract or agreement with, or receiving any deed or conveyance whatsoever, from any person or persons whatsoever, for any lands or tenements whatsoever, within the bounds already marked out or surveyed by the defendants, for the said Rail Road, or within the bounds of or in any manner interfering with the lands, tenements, or appurtenances,

designated by the said surveys and reports of the engineers, under the authority of the Government of the United States, for the site or route of the said Chesapeake and Ohio Canal, or of any of its incidental works or appendages, or any where so near the same, as to restrict the liberty of choice in the Chesapeake and Ohio Canal Company, to appropriate the ground near or about the said surveyed route or site, and the materials thereon, to the purposes of the said Canal, until the said Chesapeake and Ohio Canal Company shall have been allowed a reasonable time, in the judgment of the Court, to complete their actual surveys and definitive locations of their said Canal, according to a reasonable and fair exercise of their priority of election and appropriation: that, in the mean time, all the Justices of the Peace and Sheriffs of the Counties of Alleghany, Washington, and Frederick, be strictly prohibited and enjoined, the one from issuing, and the other from executing any warrant for summoning any jury or juries to assess damages for the condemnation of any lands so surveyed or marked out by the defendants, for the route or site of the said Rail Road: and that the complainants may have such further and other relief in the premises as the Court shall seem meet. May it please you to grant to these complainants the State of Maryland's writ and writs of subpoena and injunction to be directed to the said defendants, their agents, &c., and to the said Justices and Sheriffs &c. commanding them, &c. &c.

WILLIAM PRICE, }
WALTER JONES, } *Sol. for Compt's.*

June 10th, 1828.

Ordered by the Court this 10th day of June, 1828, that injunction issue in this case pursuant to the prayer of this bill.

TH. BUCHANAN.

Walter Jones, being a member of both the corporations who are complainants in this Bill, makes oath that he is credibly informed, and has good reason to think and believe, and does verily think and believe that the allegations contained in the within bill are substantially true as therein stated.

Sworn to in open Court this 10th June, 1828.

Test,

O. H. WILLIAMS, *Clerk.*

Washington County, ss.

I hereby certify that the foregoing is a true and perfect copy of the original bill filed in Washington County Court, as a Court of Equity.

[SEAL.] In testimony whereof I hereto subscribe my name and affix the seal of said Court, this 19th April, 1830.

O. H. WILLIAMS, *Clerk.*

Wash. Co. Ct. Md.

D.

POTOMAC COMPANY.

PROCEEDINGS OF THE POTOMAC COMPANY.

GEORGETOWN, D. C. 16th May. 1825.

At a special meeting of the Stockholders of the Potomac Company, held this day at Semmes' Tavern, previous notice thereof having been given conformably to law—

The following resolutions were unanimously adopted :

That this meeting, having duly considered the act of the General Assembly of the State of Virginia, passed at the December session thereof, in the year 1823, entitled "An act incorporating the Chesapeake and Ohio Canal Company, and the acts of the General Assembly of Maryland, and of the Congress of the United States, confirming the same, and being willing and desirous that the charter shall be granted and confirmed to the said Chesapeake and Ohio Canal Company, do hereby declare the full and free assent of the Potomac Company to the said act incorporating the said Chesapeake and Ohio Canal Company, and to all the provisions thereof.

That the President of the Potomac Company be, and he is hereby, required to deliver to the Executives of the State of Virginia, Maryland, and Pennsylvania, respectively, and to the Secretary of the Treasury of the United States, copies of the foregoing declaration of assent and corporate act of the Potomac Company, as required by the first section of the act of the General Assembly of Virginia, entitled "An act incorporating the Chesapeake and Ohio Canal Company."

That the President and Directors of the Potomac Company be, and they are hereby, authorized and required, in the name and behalf of this Company, whenever, agreeably to the terms and provisions of the aforesaid act of Virginia, entitled "An act incorporating the Chesapeake and Ohio Canal Company," the subscribers therein mentioned and referred to shall have become incorporated, to make a surrender of the charter of the Potomac Company, to the said Chesapeake and Ohio Canal Company, and to convey, in due form of law, to the said Chesapeake and Ohio Canal Company, all the property, rights, and privileges, owned, possessed, and enjoyed, by the said Potomac Company, under their said charter; to be held, used, and occupied, by the said Chesapeake and Ohio Canal Company, in the same manner and to the same effect, as the said Potomac Company now hold, possess, and occupy, the same by law. And it is hereby resolved and declared, that, upon the completion of the said surrender and conveyance by the said President and Directors, to be evidenced by deed or deeds in the name of this Company, under the hands of the said President and Directors, or a majority of them, and the corporate seal of this Company, the said charter shall be, and hereby is, effectually surrendered, and all the said property, rights, and privileges, shall be, and hereby are, effectually conveyed to the said Chesapeake and Ohio Canal Company, according to the tenor and

effect, true intent and meaning, of the said act and acts so incorporating the Chesapeake and Ohio Canal Company, as aforesaid.

In testimony whereof, as the corporate act of the Potomac Co. &c.

OFFICE OF THE POTOMAC COMPANY,
Georgetown, 16th May, 1825.

I hereby certify the foregoing to be a true and faithful extract from the records of the proceedings of the Potomac Company.

ROBERT BARNARD,
Treas. and Clk. Poto. Com.

GEORGETOWN, July 10, 1828.

At a special general meeting of the Stockholders of the Potomac Company, holden this day at Semmes' Tavern, previous notice thereof having been given conformably to law,

The meeting took into consideration the acts amendatory of the act incorporating the Chesapeake and Ohio Canal Company, and it was decided to vote separately on each of the acts specifically requiring the assent of this Company.

The act of Maryland, entitled "An act to amend the 'act incorporating the Chesapeake and Ohio Canal Company,'" passed at the December session, 1826, of the Legislature of said State, was read, considered, and received the unanimous assent of this meeting.

The act of Maryland, entitled "An act further to amend the act incorporating the Chesapeake and Ohio Canal Company," passed at the December session, 1827, of the Legislature of said State, was read, considered, and the unanimous assent of this meeting was given thereto.

The following resolution was offered, and, after consideration, was unanimously adopted.

Whereas, since the resolution unanimously adopted at the general meeting of the Potomac Company, holden on the 16th May 1825, in relation to a surrender of the rights of said Company to the Chesapeake and Ohio Canal Company, sundry acts have passed the Legislatures of Virginia and Maryland, and the Congress of the United States, modifying in sundry particulars, for which reference may be had to the said acts, the charter of the said Chesapeake and Ohio Canal Company, in some of which acts it is expressly provided, that they shall, prior to their operation, receive the assent and approbation of this Company, and in relation to others, the assent and approbation of this Company may, in construction of law, be deemed essential to their validity, in whole or in part :

Be it therefore unanimously resolved by this general meeting, That the assent and approbation of the Potomac Company is hereby given expressly to each and all of said acts, so far as the same may be deemed necessary to the validity or future operation of each and all of said acts, in as full and perfect manner as if each and all of said acts were herein specifically enumerated and recited.

JAMES KEITH, *Chairman.*

Resolved, unanimously, That the President of the Potomac Company be, and he is hereby, required to deliver to the Executives of the States of Virginia and Maryland, respectively, and to the Secretary of the Treasury of the United States, copies, under the seal of this Company, of the foregoing declaration of assent and corporate act of the Potomac Company, to the acts therein referred to.

JAMES KEITH, *Chairman.*

DEED OF SURRENDER OF THE POTOMAC COMPANY.

KNOW ALL MEN BY THESE PRESENTS, That, whereas at a general meeting of the Stockholders of the Potomac Company, duly held at Semmes's Tavern, in Georgetown, in the District of Columbia, on the sixteenth day of May, in the year eighteen hundred and twenty five, the said Potomac Company duly signified and declared their assent to the provisions of the Act of the General Assembly of Virginia, passed at the December session thereof, in the year eighteen hundred and twenty-three, entitled "An act incorporating the Chesapeake and Ohio Canal Company," and to the acts of the General Assembly of Maryland, and of the Congress of the United States, confirming the same, by the corporate act of the said Potomac Company, duly executed, copies whereof have been duly delivered to the Executives of the States of Virginia, Maryland, and Pennsylvania, and to the Secretary of the Treasury of the United States, pursuant to the directions of the said acts of Assembly and of Congress: And whereas, at the same meeting of the Potomac Company, held as aforesaid, the President and Directors of the said Company were duly authorized and required by the said Company to make, in the name and behalf of the said Company, a surrender of the charter of the said Company to the said Chesapeake and Ohio Canal Company, and to convey, in due form of law, to the said Chesapeake and Ohio Canal Company, all the property, rights, and privileges, owned, possessed, and enjoyed, by the said Potomac Company under their charter, to be held, used, and occupied, by the said Chesapeake and Ohio Canal Company, in the same manner, and to the same effect, as the said Potomac Company held, possessed, and occupied, the same by law; that is to say, whenever, agreeably to the terms and provisions of the aforesaid act of Virginia, the subscribers therein mentioned and referred to should have become incorporated; and it was then and there by the said Potomac Company, by their corporate act duly made and recorded, further resolved and declared, that, upon the completion of the said surrender and conveyance, by the said President and Directors, to be evidenced by deed or deeds in the name of the said Potomac Company, under the hands of the said President and Directors, or a majority of them, and the corporate seal of the said Potomac Company, the said charter of the said Potomac Company should be, and, by the said last mentioned corporate act of the said Company, become, effectually surrendered, and all the said property, rights, and privileges, effectually conveyed to the Chesapeake and Ohio Canal Company, according to the tenor and effect, true intent and

meaning, of the said act and acts so incorporating the Chesapeake and Ohio Canal Company, as aforesaid; all which will more particularly and at large appear, reference being had to the record of the proceedings and corporate acts of the said Potomac Company: And whereas the subscribers to the capital stock of the said Chesapeake and Ohio Canal Company have become, and now are, fully incorporated as a body politic and corporation aggregate, agreeably to the provisions of the said act of Virginia, and by force of that act, and of the other acts confirming the same as aforesaid; and being so incorporated, have duly elected a President and six Directors, as authorized and required by the said act and acts of Assembly and of Congress, who have respectively taken the oath or affirmation prescribed by the same, and are now duly organized as a Board: Now, be it known, that the said Potomac Company, by their said President and Directors, acting in the name and behalf of the said Company, in consideration of the premises, and in the due and faithful pursuance and execution of the intent of the said Company, so resolved and declared as aforesaid, and of the power and authority by them vested in the said President and Directors as aforesaid, have given, granted, surrendered, transferred, assigned, and conveyed, and do hereby, by these presents, give, grant, surrender, transfer, assign, and convey, to the said Chesapeake and Ohio Canal Company, and to their successors forever, the charter of the said Potomac Company, and all the property, rights, and privileges, by them owned, possessed, and enjoyed, under the same: To have and to hold all and singular the said property, rights, and privileges, unto the said Chesapeake and Ohio Canal Company, and their successors for ever, to be held, possessed, used, and occupied by them, and to their only use, benefit, and behoof, in the same manner, and to the same effect, as the said Potomac Company held, possessed, and occupied, the same by law, on the said sixteenth day of May, in the year eighteen hundred and twenty-five. In witness whereof, John Mason, President of the Potomac Company, and Jonah Thompson, John Laird, and Clement Smith, Directors of the said Company, being a majority of the said President and Directors, have, on this fifteenth day of August, in the year eighteen hundred and twenty-eight, hereunto subscribed their names, with their proper hands, and affixed the corporate seal of the said Company, in due pursuance and execution of the power and authority vested in the said President and Directors by the said Company as aforesaid.

J. MASON,
JONAH THOMPSON,
JOHN LAIRD,
C. SMITH.

Sealed and delivered in the presence of

W. CRANCH.

ROBERT BARNARD, *Sec. Pot. Co.*

District of Columbia, to wit:

Be it known, that on this fifteenth day of August, in the year of our Lord eighteen hundred and twenty eight, before the subscriber,

William Cranch, Chief Judge of the Circuit Court of the District of Columbia, personally appear the above-named John Mason, President, and Jonah Thompson, John Laird, and Clement Smith, Directors of the said Company, being a majority of the said President and Directors of the Potomac Company, and before me execute and acknowledge the foregoing deed or instrument of writing, as and for the act and deed of the said Potomac Company, duly executed and delivered by them, on the considerations and for the purposes therein set forth, according to the true intent, meaning, and purport of the same.

W. CRANCH.

At a meeting of the Stockholders of the Chesapeake and Ohio Canal Company, holden the 17th September, 1828, by adjournment from the 10th of the same month, it was

Resolved by the Stockholders of the Chesapeake and Ohio Canal Company in General Meeting, That the Chesapeake and Ohio Canal Company, do approve and accept the surrender and transfer of the charter of the Potomac Company to the Chesapeake and Ohio Canal Company, made on the 15th day of August, 1828, by the President and Directors of the Potomac Company, pursuant to the resolutions of the Stockholders of the said Company, and to the terms of the charter of the Chesapeake and Ohio Canal Company.

EXTRACTS FROM ACTS OF THE STATE OF VIRGINIA IN RELATION
TO THE POTOMAC COMPANY.

An act for opening and extending the navigation of Potomac river.
[Passed October, 1784.]

"1. Whereas the extension of the navigation of Potomac river, from tide water to the highest place practicable on the North branch, will be of great public utility, and many persons are willing to subscribe large sums of money to effect so laudable and beneficial a work; and it is just and proper that they, their heirs, and assigns, should be empowered to receive reasonable tolls forever, in satisfaction for the money advanced by them in carrying the work into execution, and the risk they run: and whereas it may be necessary to cut canals, and erect locks and other works on both sides of the river, and the Legislatures of Maryland and Virginia, impressed with the importance of the object, are desirous of encouraging so useful an undertaking: Therefore,"

"3. *And be it enacted*, That in case one half of the said capital, or a greater sum, shall be subscribed as aforesaid, the said subscribers, and their heirs and assigns, from the time of the said first meeting, shall be, and are hereby declared to be, incorporated into a company, by the name of the "Potomac Company," and may sue and be sued as such; and such of the said subscribers as shall be present at the

said meeting, or a majority of them, are hereby empowered and required to elect a president and four directors, for conducting the said undertaking, and managing all the said company's business and concerns, for and during such time, not exceeding three years, as the said subscribers, or a majority of them, shall think fit. And in counting the votes of all general meetings of the said company, each member shall be allowed one vote for every share, as far as ten shares, and one vote for every five shares above ten, by him or her held at the time in the said company; and any proprietor, by writing under his or her hand, executed before two witnesses, may depute any other member or proprietor to vote and act as proxy for him or her, at any general meeting."

"4. *And be it enacted*, That the said president and directors so elected, and their successors, or a majority of them assembled, shall have full power and authority to agree with any person or persons, on behalf of said company, to cut such canals, and erect such locks, and perform such other works as they shall judge necessary for opening, improving, and extending the navigation of the said river above tide water, to the highest part of the North Branch, to which navigation can be extended, and carrying on the same, from place to place, and from time to time, and upon such terms, and in such manner as they shall think fit; and out of the money arising from the subscriptions and the tolls, and other aids hereinafter given, to pay for the same and to repair and keep in order the said canals, locks, and other works necessary thereto, and to defray all incidental charges:

"9. *And be it further enacted*, That, for and in consideration of the expenses the said proprietors will be at, not only in cutting the said canals, erecting locks, and other works, for opening the different falls of the said river, and in improving and extending the navigation thereof, but in maintaining and keeping the same in repair, the said canals and works, with all their profits, shall be, and the same are hereby, vested in the said proprietors, their heirs and assigns, forever, as tenants in common, in proportion to their respective shares, and the same shall be deemed real estate, and be forever exempt from payment of any tax, imposition, or assessment, whatsoever; and it shall and may be lawful for the said president and directors, at all times forever hereafter, to demand and receive, at the nearest convenient place below the mouth of the South branch, and at or near Payne's Falls, and at or above the Great Falls of the river Potomac, and every of these places separately, for all commodities transported through either of them, respectively, tolls, according to the following table and rates, to wit:"

"And in case of refusal or neglect to pay the tolls at the time of offering to pass through any of the said places, and previous to the vessel's passing through the same, the collectors of the said tolls may lawfully refuse passage to such vessels; and if any vessel shall pass without paying the said toll, then the said collectors may seize such vessel, wherever found, and sell the same at auction for ready money, which, so far as is necessary, shall be applied towards paying the

said toll, and all expenses of seizure and sale, and the balance, if any, shall be paid to the owner, and the person having the direction of such vessel shall be liable for such toll, if the same is not paid by sale of such vessel, as aforesaid.

“ 10. *And be it enacted*, That the said river, and the works to be erected thereon in virtue of this act, when completed, shall forever thereafter be esteemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities, or produce, whatsoever, on payment of the tolls imposed by this act; and no other toll or tax whatever, for the use of the water of the said river, and the works thereon erected, shall, at any time hereafter, be imposed, by both or either of the said States, subject, nevertheless, to such regulations as the Legislatures of the said States may concur in, to prevent the importation of prohibited goods, or to prevent fraud in evading the payment of duties imposed in both or either of the said States, on goods imported into either of them. And whereas it is necessary for the making the said canal, locks, and other works, that a provision should be made for condemning a quantity of land for the purpose—

“ 11. *Be it enacted*, That it shall and may be lawful for the said president and directors, or a majority of them, to agree with the owners of any land, through which the said canal is intended to pass, for the purchase thereof, and in case of disagreement, or in case the owner thereof shall be a feme-covert, under age, non compos, or out of the State, on application to any two justices of the county, in which such land shall lie, the said justices shall issue their warrant under their hands, to the sheriff of their county, to summon a jury of twenty-four inhabitants of his county, of property and reputation, not related to the parties, nor in any manner interested, to meet on the land to be valued, at a day to be expressed in the warrant, nor less than ten, nor more than twenty days thereafter; and the sheriff, upon receiving the said warrant, shall forthwith summon the said jury, and when met, provided that not less than twelve do appear, shall administer an oath or affirmation to every jurymen that shall appear: ‘That he will faithfully, justly, and impartially, value the land, (not exceeding in any case the width of one hundred and forty feet) and all damages the owner thereof shall sustain by the cutting the canal through such land, according to the best of his skill and judgment; and that in such valuation, he will not spare any person through favor or affection, nor any person grieve through malice, hatred, or ill will.’ And the inquisition thereupon taken, shall be signed by the sheriff, and some twelve or more of the jury, and returned by the sheriff to the clerk of his county, to be by him recorded: And upon every such valuation, the jury is hereby directed to describe and ascertain the bounds of the land by them valued, and their valuation shall be conclusive on all persons, and shall be paid by the said president and directors, to the owner of the land, or his legal representative; and on payment thereof, the said company shall be seized in fee of such land, as if conveyed by the owner to

them, and their successors, by legal conveyance : *Provided, nevertheless,* That if any farther damage shall arise to any proprietor of land, in consequence of opening such canal, or in erecting such works, than had been before considered and valued, it shall and may be lawful for such proprietor, as often as any such new damage shall happen, by application to, and a warrant from, any two justices of the county where the lands lie, to have such further damage valued by a jury in like manner, and to receive and recover the same of the said president and directors. But nothing herein shall be taken or construed to entitle the proprietor of any such land to recover compensation for any damages which may happen to any mills, forges, or other waterworks or improvements, which shall be begun or erected by such proprietor, after such first valuation, unless the said damage is wilfully or maliciously done by the said president and directors, or some person by their authority.

“ 12. *And be it enacted,* That the said president and directors, or a majority of them, are hereby authorized to agree with the proprietors for the purchase of a quantity of land, not exceeding one acre, at or near each of the said places of receipt of tolls aforesaid, for the purpose of erecting necessary buildings ; and in case of disagreement, or any of the disabilities aforesaid, or the proprietor being out of the State, then such land may be valued, condemned, and paid for, as aforesaid, for the purpose aforesaid ; and the said company shall, upon payment of the valuation of the said land, be seized thereof, in fee simple, as aforesaid : And whereas some of the places through which it may be necessary to conduct the said canals may be convenient for erecting mills, forges, and other water works, and the persons possessors of such situation may design to improve the same, and it is the intention of this act not to interfere with private property, but for the purpose of improving and perfecting the said navigation—

“ 13. *Be it enacted,* That the water, or any part thereof, conveyed through any canal or cut made by the said company, shall not be used for any purpose but navigation, unless the consent of the proprietors of the land through which the same shall be led, be first had ; and the said president and directors, or a majority of them, are hereby empowered and directed, if it can be conveniently done, to answer both the purposes of navigation and water works aforesaid, to enter into reasonable agreements with the proprietors of such situation, concerning the just proportion of the expenses of making large canals or cuts capable of carrying such quantities of water as may be sufficient for the purposes of navigation, and also for any such water works as aforesaid.

“ And whereas it hath been represented to this General Assembly, that sundry persons are willing and desirous, on account of the great public advantages and improvement their estates may receive thereby, to promote and contribute towards so useful an undertaking, and to subscribe sums of money to be paid on condition the said works are really completed and carried into execution, but do not care to run any risk, or desire to have any property therein—

“ 15. *Be it therefore enacted*, That the said president and directors shall be, and are hereby empowered to receive and take in subscriptions, upon the said condition, and upon the said works being completed and carried into execution, according to the true intent and meaning of this act, that it shall and may be lawful for the said president and directors, or a majority of them, in case of refusal or neglect of payment, in the name of the company as aforesaid, to sue for and recover of the said subscribers, their heirs, executors or administrators, the sums by them respectively subscribed, by action of debt, or upon the case, in any court of record within this State.

“ 16. *And be it enacted*, That, if the said capital, and other aids already granted by this act, shall prove insufficient, it shall and may be lawful for the said company, from time to time, to increase the said capital by the addition of so many more whole shares, as shall be judged necessary by the said proprietors, or a majority of them, holding at least three hundred shares, present at any general meeting of the said company.

“ 17. *And it is hereby declared and enacted*, That the tolls hereinbefore allowed, to be demanded and received at the nearest convenient place below the mouth of the South Branch, are granted, and shall be paid, on condition only, That the said Potomac Company shall make the river well capable of being navigated in dry seasons, by vessels drawing one foot water from the place on the North Branch, at which a road shall set off to the Cheat river, agreeably to the determination of the Assemblies of Virginia and Maryland, to and through the place which may be fixed on, below the mouth of the South Branch; for receipt of the tolls aforesaid; but if the said river is only made navigable as aforesaid, from Fort Cumberland, to and through the said place below the mouth of the South Branch, then only two-thirds of the said tolls shall be there received. That the tolls hereinbefore allowed, to be demanded and received at or near Payne's Falls, are granted and shall be payable on condition only, that the said Potomac Company shall make the river well capable of being navigated in dry seasons, by vessels drawing one foot water, from the said place of collection, near the mouth of the South Branch to and through Payne's Falls as aforesaid. That the tolls hereinbefore allowed to be demanded and received at the Great Falls, are granted and shall be payable on condition only, that the said Potomac Company shall make the river well capable of being navigated in dry seasons, from Payne's Falls to the Great Falls, by vessels drawing one foot water, and from the Great Falls to tide water, and shall, at or near the Great Falls, make a cut or canal, twenty-five feet wide, and four feet deep, with sufficient locks, if necessary, each of eighty feet in length, sixteen feet in breadth, and capable of conveying vessels or rafts drawing four feet water at the least, and shall make, at or near the Little Falls, such canal and locks, if necessary, as will be sufficient and proper to let vessels and rafts aforesaid, into tide water, or render the said river navigable in the natural course.

“ 18. *And it is hereby provided and enacted*, That, in case the said company shall not begin the said work within one year after the company shall be formed, or if the navigation shall not be made and improved between the Great Falls and Fort Cumberland, in the manner hereinbefore mentioned, within three years after the said company shall be formed, that then the said company shall not be entitled to any benefit, privilege, or advantage, under this act : And in case the said company shall not complete the navigation through and from the Great Falls to tide water as aforesaid, within ten years after the said company shall be formed, then shall all interest of the said company and all preference in their favor, as to the navigation and tolls, at, through, and from, the Great Falls to tide water, be forfeited, and cease.

“ 19. *And be it enacted*, That all commodities of the produce of either of the said States, or of the Western country, which may be carried or transported through the said locks, canals, and river, may be landed, sold, or otherwise disposed of, free from any other duties, impositions, regulations, or restrictions, of any kind, than the like commodities of the produce of the State in which the same may happen to be so landed, sold, shipped, or disposed of.

“ 21. *And be it further enacted*, That so much of every act and acts within the purview of this act, shall be, and the same is hereby, repealed.”

An act to amend an act entitled “An act for opening and extending the navigation of the Potomac river—[Passed Dec. 16, 1790.]

Whereas it has been represented to the present General Assembly, by the President and Directors of the Potomac Company, that the time allowed by law for making and improving the navigation of the Potomac River, between the Great Falls and Fort Cumberland, in the manner therein mentioned, is found not sufficient to perform the work—

SEC. 2. *Be it therefore enacted*, That the further time of three years shall be allowed the said Company for making and improving the navigation of the said river above the Great Falls.

SEC. 3. *And be it further enacted*, That none of the shares not already subscribed for, be hereafter taken up, but on first paying the amount of the previous calls, and interest from the time the calls ought to have been complied with, and that delinquent subscribers shall pay interest from the time the money called for ought to have been paid, with the actual expense of notice, and that the same shall be recovered with, and in like manner, as the principal.

SEC. 4. *And be it further enacted*, That the place of collection of tolls shall be at or near Hook's Falls, instead of being at or near Payne's, and that one-fourth of the tolls made payable at Payne's

Falls, shall henceforth be demandable and received at Hook's Falls, and one-fourth of the tolls payable at the Great Falls, shall be demandable and received at the Great Falls, and also on goods and produce landed at or near *Watts'* branch.

SEC. 5. *And be it further enacted*, That the president and directors of the said Company are hereby empowered to apply so much of the capital subscribed, and tolls as may arise, as they shall judge necessary towards opening, improving, and extending navigation on the branches of Potomac river, above Seneca.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for persons, not citizens of this Commonwealth, to purchase and hold the non-subscribed shares of the said Potomac Company : *Provided*, That the persons so purchasing shall not thereby become citizens of this Commonwealth.

An act to amend the act, entitled " An act to amend the act entitled " An act for opening and extending the navigation of Potomac river." [Passed November 21, 1791.]

Whereas, on application of the President and Directors of the Potomac Company, an act was passed during the last session of the General Assembly, which, among other things, did grant to the said Company the right to open, extend, and improve the navigation of the branches of the Potomac river, above Seneca, which grant was made from an expectation that the said Company would forthwith proceed in improving the navigation of the said branches :

1. *Be it therefore enacted by the General Assembly*, That the said grant shall be forfeited unless the Company aforesaid proceed, within twelve months from the date hereof, in the opening and improving the navigation of the said branches.

2. *And be it further enacted*, That it shall and may be lawful for persons not citizens of this Commonwealth to purchase and hold the subscribed, as well as the non-subscribed shares of the Potomac Company, provided, that the persons so purchasing, shall not thereby become citizens of this Commonwealth.

General Assembly, begun and held at the Capitol, in the City of Richmond, on Monday, the twenty-first day of October, in the year of our Lord one thousand seven hundred and ninety-three.--[Passed November 23, 1793.]

1. *Be it enacted*, That so much of the act of General Assembly, passed in the year 1787, entitled " An act giving a more speedy remedy against delinquent subscribers to the Potomac and James River Companies," as relates to the Potomac Company, shall be, and is hereby repealed ; and so much of the act of the General Assembly,

entitled "An act for opening and extending the navigation of Potomac river," as directed the sale of the shares of delinquent subscribers, shall be and remain in full force and effect.

2. *And be it further enacted*, That the time for completing the navigation of Potomac river, between the Great Falls and the head, shall be, and is hereby, extended until the first day of January, 1795, and that no privilege or advantage granted by law shall be forfeited or lost, in case the navigation aforesaid shall be finished within the time hereby limited, any thing in any act to the contrary thereof notwithstanding.

3. *And be it further enacted*, That the several tolls made payable by the act of General Assembly, entitled "An act for opening and extending the navigation of Potomac river at Payne's Falls," shall, instead thereof, be payable at Hook's Falls, and the tolls by said act made payable at the Great Falls, shall be payable at the Great Falls, and at Watts' branch, in such proportion as shall be directed by the President and Directors of the Potomac Company: and that the tolls by the said act made payable at the mouth of the South Branch, shall be, and are hereby, made payable at some convenient place between the mouths of Great Cacapeton and Conococheague, to be appointed by the President and Directors of the Potomac Company, any thing in any former act or acts of Assembly to the contrary notwithstanding: *Provided always*, that this act and every part thereof shall be, and the same is hereby, suspended, until the Legislature of the State of Maryland shall pass a law or laws to the like effect.

[By act of Virginia, concerning the General Court of the State, jurisdiction is granted to the General Court to hear and determine motions against delinquent subscribers to Potomac Company. 18th Dec. 1819, Act of Virginia relating to the powers of the Superior Court of the States grants to Circuit Courts jurisdiction to hear and determine motions against sheriffs and other law officers, for refusing to pay moneys due to them and to the Potomac Company and others.]

An act authorizing the Potomac Company to open the Shenandoah River.—[Passed January 13, 1802.]

Whereas the extension of the navigation of the river Shenandoah will be of public utility, for which purpose it may be necessary to cut canals and erect locks and other works on both sides of the river, and the Legislature of Virginia be impressed with the importance of the object, and desirous of encouraging so useful an undertaking; and whereas it is in proof before the Legislature that the endeavors to form a company for that purpose, under the act of Legislature, passed January 23, 1798, have been ineffectual, and the Potomac

Company having, by their Board of Directors, communicated to the present Legislature their willingness to undertake that important work—

2. *“Be it therefore enacted by the General Assembly, That, for and in consideration of the expenses the said company will be at, not only in cutting the said canals, erecting locks, and other works, for opening the falls of the said river, and the north and south branches, to wit : The North Branch, up to the mouth of Smith’s Creek, in the County of Shenandoah, and the South Branch to a place called Carthraes, in the County of Rockingham, where the said South Branch forks, and in improving and extending the navigation thereof—but in maintaining and keeping the same in repair, the said canals and works, with all their profits shall be, and the same are hereby, vested in the Stockholders of the Potomac Company, their heirs and assigns, forever, as tenants in common, in proportion to the shares held by them respectively, and the same shall be deemed real estate, and be forever exempt from the payment of any tax, imposition, or assessment whatever ; and the said president and directors shall be entitled to demand and receive, at such place or places on the said river as they shall think proper, the same tolls which were allowed the Shenandoah Company under the act of General Assembly, passed the 23d day of January, 1798, entitled “An act for opening and extending the navigation of the Shenandoah river, but which tolls shall be subject to a reasonable deduction by the Legislature, after the end of seven years from the completion of the said navigation ; and they shall demand the said tolls immediately after they have rendered the mouth of the said river Shenandoah navigable, which tolls may be discharged in dollars and cents and other coin made current by law.*

“4. And be it further enacted, That the said river, and the works to be erected thereon in virtue of this act, when completed, shall forever thereafter be esteemed and taken to be navigable, as a public highway, free for the transportation of all goods, commodities, or produce, whatsoever, on payment of the tolls imposed by this act ; and no other toll or tax whatever, for the use of the water of the said river, and the works thereon erected, shall, at any time hereafter, be imposed by the General Assembly of Virginia.

“5. And whereas it is necessary for making the said canals, locks, and other works, that a provision should be made for condemning quantity of land for the purpose : Be it enacted, That &c.

“11. And be it further enacted, That if the said president and directors shall deem it necessary to increase the capital of the said company, for the purpose of completing and carrying on the said works, it shall and may be lawful for them to open books and receive subscriptions therein of one hundred shares in addition to the shares now held by the present Potomac Company ; and such subscribers, on the payment of the sum of one hundred and forty-five pounds sterling each, to the said president and directors or their treasurer, in such proportion and times as they, the said president and directors,

shall appoint, shall henceforth be deemed and considered as members of the said company, and entitled to receive their full dividends and proportions of the tolls herein mentioned.

“12. This act shall commence and be in force from and after the passing thereof.”

An act to repeal a part of the act, entitled “An act authorizing the Potomac Company to open the Shenandoah river—[Passed January 4, 1803.]

1. *Be it enacted by the General Assembly*, That so much of the act passed at the last session, entitled “An act authorizing the Potomac Company to open the Shenandoah River,” as reserves to the Legislature the right of reducing, after the expiration of seven years from the completion of the navigation of said river, the tolls by the said act allowed, shall be, and is hereby, repealed.

2. And the tolls hereby granted by the said act are hereby secured to the Stockholders of the Potomac Company, their heirs and assigns, forever, in the same manner that the tolls on the Potomac have been heretofore secured by the Legislatures of Virginia and Maryland.

3. *And be it further enacted*, That the term of five years, allowed by the before recited act, for completing the navigation of the Shenandoah river, shall be computed from the time of passing this act.

4. This act shall be in force from the passing thereof.

An act concerning the Potomac Company.—[Passed January, 27, 1803.]

Whereas it appears, by a memorial from the Directors of the Potomac Company, that the locks erected at the Great Falls are only twelve feet in breadth, instead of fourteen feet as the law directs :

2. *Be it enacted and declared*, That the said locks which have been already erected and completed, shall be deemed and taken as sufficient and effectual, as if the same had been constructed and erected of the breadth of fourteen feet : *Provided always*, That nothing herein contained shall be construed to authorize the erecting in future any lock or locks, for the improvement of the navigation of the said river, of any dimensions less than eighty feet in length and twelve feet in breadth : *Provided, also*, That every lock which shall hereafter be repaired or erected, shall be repaired or erected of stone, or such materials as a general meeting of the proprietors shall deem most conducive to the public interest and convenience.

3. And, whereas, it appears, by the said memorial, that doubts have arisen relative to the true construction of the seventeenth section of the act entitled “An act for opening and extending the navigation of the Potomac river,” in the specification therein mentioned and expressed of the seasons in which the said river shall

be made well capable of being navigated: *Be it therefore enacted and declared*, That, by the words "dry seasons," as used in the said section, were and are to be intended and understood, all seasons, so far as relates to the navigation of the said river from Fort Cumberland to tide water.

4. *And be it enacted*, That Tobias Lear, Stevens Thompson Mason, Lawrence A Washington, Hugh Holmes, Nicholas Fitzhugh, Osborne Sprigg, and Edward McCarty, shall and are hereby appointed Commissioners to explore and review the said river at any time before the first day of November, when the water is in such a state as to enable them to judge most accurately of the work which has been done by said Company, and they shall report to the next General Assembly the manner in which the said work is done, the depth of water in the shallowest places where boats generally pass, and all other necessary information that can be procured relative to the subject, together with their own opinions thereon.

5. *And be it further enacted*, That the said Potomac Company are hereby authorized and empowered to employ from the State of Maryland, slaves, for the purpose of further improving the navigation of the said river, and that the slaves so employed shall not be entitled to their freedom in consequence of such removal from Maryland, any law to the contrary notwithstanding.

6. *Be it enacted*, That the further time of three years, to be computed from the expiration of the term already given, shall be, and is hereby, allowed the Potomac Company, to complete the navigation of the said river.

7. *Provided*, That a majority of the said Commissioners shall be sufficient to execute the duties assigned them by this act, who shall be paid for their services by the Potomac Company.

8. This act shall commence and be in force from and after the passing thereof.

An act concerning the Potomac Company.—[Passed 5th January, 1808.]

Be it enacted by the General Assembly, That the President and Directors of the Potomac Company shall be, and they are hereby, allowed the further term of three years, from the expiration of the time heretofore allowed by law, to complete the navigation of the Shenandoah river.

2. This act shall be in force from the passing thereof.

An act concerning the Potomac Company.—[Passed 11th January, 1811.]

Be it enacted by the General Assembly, That the further term of three years, to be computed from the expiration of the term heretofore

granted, shall be, and the same is hereby, allowed to the Potomac Company, to complete the navigation of the Potomac and Shenandoah rivers.

2. This act shall be in force from the passing thereof.

AN ACT OF THE STATE OF VIRGINIA.

Extracts from "An act incorporating a New Company, to open and extend the navigation of Shenandoah River and its Branches, and for other purposes.—[Passed February 3, 1814.]

"Whereas the extension of the navigation of Shenandoah river will be of public utility, and the Potomac Company, which has failed to complete the said navigation, within the time limited by their charter has, on certain conditions, agreed to relinquish any further claim thereto: And whereas it may be necessary to cut canals and erect locks and other works on both sides of the river; and the General Assembly, impressed with the importance of the object, are desirous of encouraging so useful an undertaking:"

"19. *And be it further enacted*, That the President and Directors of the said company shall pay and reimburse to the Potomac Company the value of the locks and other works done and erected in the Shenandoah river and its branches, by the said Company; to be ascertained and fixed by two or more reputable and disinterested persons, to be appointed by the Directors of the respective Companies; which valuation shall be paid in ten equal annual instalments, with legal interest, commencing from the first day of January, one thousand eight hundred and fifteen: *Provided however*, That, if the tolls herein allowed, shall not, in any year amount to the instalment payable in that year, the balance shall not be required to be paid in that year, but the payment thereof shall be postponed, until it can be paid out of subsequent tolls."

"21. *And be it further enacted*, That if the said Company shall not be formed on or before the first day of December next, or the work commenced within eighteen months from and after the formation of the said Company; or if the navigation shall not be made and improved as aforesaid, in the manner hereinbefore mentioned, within five years after the said Company shall be established, that then the said Company shall not be entitled to any benefit, privilege, or advantage, under this act; and the right of the Commonwealth to extend to the Potomac Company, upon just and equitable conditions, a further time to open and improve the navigation of said river, or otherwise to dispose of the subject, in such manner as to them may seem wise and just, shall thereupon revert and be complete."

AN ACT OF THE STATE OF VIRGINIA.

“An act extending the time of completing subscriptions, and organizing the New Shenandoah Company, and for other purposes.—[Passed 9th November, 1814.]

“Be it enacted by the General Assembly, That the period of six months to be computed from the termination of the present war between the United States and Great Britain, be, and the same is hereby allowed to the New Shenandoah Company, to complete the subscriptions and organize the said company, instead of the time prescribed by the act incorporating the same. And all the interest arising under any contract or contracts between the said Company and the Potomac Company shall cease to accrue, until the said Shenandoah Company shall be organized and established.

“2. And be it further enacted, That the term of five years, commencing from the time the said Company shall be organized and established, be, and is hereby, allowed them, to open and extend the navigation of the Shenandoah and its branches.●

“3. This act shall be in force from the passing thereof.”

[By act of the State of Virginia, 2d January, 1824, the New Shenandoah Company are allowed five years, to be computed from 1st August, 1824, to comply with the conditions of the act incorporating said Company.]

Memorandum of an agreement made between the President and Directors of the New Shenandoah Company, on the one part, and the Potomac Company, by Jonah Thompson, their agent, on the other part—

WITNESSETH : That, for and in consideration of the conveyance of the canals cut, the locks erected and all and every of the rights, claims, and interests, of the Potomac Company, heretofore cut, erected, and claimed, by the said Potomac Company, on the Shenandoah river, hereby conveyed and ceded to the New Shenandoah Company by the said Potomac Company, the said New Shenandoah Company do agree to pay to the said Potomac Company the sum of fifteen thousand dollars, to be taken in shares of fifty dollars each, of the stock of the New Shenandoah Company, to be *redeemable* by the last said Company, agreeably to a resolution of the Potomac Company, passed in August last. And further, that the Potomac Company do bind themselves to secure, by indisputable title, their rights to the said Canals, locks, &c. clear of the adverse claims of the United States and individuals, to the New Shenandoah Company, especially of the United States' Armory, Wilson's, Grove's, and Craighill's Mills.

It is understood that the foregoing agreement is subject to the ratification of the several Companies, at their General Meeting. The New Shenandoah Company being about to have their General Meeting on the fifteenth proximo, and the Potomac Company to be called

into General Meeting, as soon as possible; unless the President and Directors of the Potomac Company shall take upon themselves the responsibility of the said ratification.

Given this 24th day of October, 1815.

CHS. STUART, *Pres. of New Sh. Co.*
DAVID GOLLADY,
GEO. HUSTON,
CHAS. LEWIS.

JONAH THOMPSON,
for the Potomac Company.

At a meeting of the Stockholders of the Potomac Company, on the 5th August, 1816, the following resolution was entered into:

Resolved, That this meeting do ratify the agreement entered into with the New Shenandoah Company, by Jonah Thompson, in behalf of the President and Directors of the Potomac Company, on the 24th October, 1815. It being, however, expressly understood, that the Potomac Company will, in no way, be bound to guaranty against the adverse claims of the United States, to any canals, or locks, or other matters; and that they will merely convey their rights to such canals, locks, &c. and place the Shenandoah Company, as to those, in their shoes: and, further, that the President and Directors of the Potomac Company, have drawn, by some competent person, an instrument of writing, fully expressing the intention of the parties, and have the same legally executed and recorded.

An act allowing further time to the Potomac Company to complete the navigation of the Potomac.—[Passed 18th of February, 1817.]

Be it enacted by the General Assembly, That the further time of three years, to be computed from the 1st day of January, one thousand eight hundred and seventeen, be allowed the Potomac Company to complete the navigation of the river Potomac.

2. This act shall be in force from the passing thereof.

Resolution concerning the upper navigation of Potomac, and a communication between the Ohio, Rappahannock and Potomac Rivers.

[Agreed to by both Houses of the Legislature of Virginia, January 8, 1820.]

Resolved by the General Assembly, That the Board of Public Works be, and they are hereby, requested to inquire into the expediency of directing their principal engineer to examine the waters of the Potomac, above the upper line of the District of Columbia, with a view to ascertain and report upon the most effectual means of improving the

navigation of the same; and to explore the country between the Potomac and the Ohio, on the one side, and the Potomac and the Rappahannock on the other, with a view to ascertain and report upon the practicability of effecting a communication by canals between the three rivers.

An act concerning the Potomac Company.

[Passed January 29, 1821.]

“Whereas it is represented to the General Assembly that the Potomac Company have failed to comply with the terms and conditions of the acts of the Legislatures of the States of Virginia and Maryland, incorporating the said Company, for the purpose of opening and extending the navigation of the river Potomac and its branches; and whereas it is the interest of this Commonwealth that such measures should be conjointly adopted by the Legislatures of the said States, as shall ensure to the people thereof the attainment of the important objects for which the charter of the said Company was granted:

“*Be it therefore enacted by the General Assembly, That* so soon as the Legislature of Maryland shall pass an act corresponding with this act in its provisions, the Governor of this Commonwealth, by and with the advice of the Council of State, shall appoint two Commissioners to meet such Commissioners as may be appointed on the part of the State of Maryland, whose duty it shall be to examine into and report the state of the navigation of the said river and its branches, and whether the same has been perfected and completed according to the terms and conditions of the acts of incorporation aforesaid. And the said Commissioners so to be appointed on the part of this State, are further directed to inquire into, and so far as they shall be enabled to ascertain the same, to report the situation and condition of the affairs of the said Company; the amount and character of their debts, and of their receipts and expenditures; and whether the present resources of the Company afford a reasonable expectation of their effecting in a short time the objects of their incorporation. And if it shall appear to the said Commissioners that the terms and conditions of the acts of incorporation aforesaid have not been complied with, or that the funds and resources of the said Company are so far exhausted as to afford no reasonable prospect of attaining in a short time the objects of the said incorporation, then it shall be the duty of the said Commissioners on the part of this State, to advise and consult with the Commissioners on the part of the State of Maryland as to the measures most advisable to be recommended to, and conjointly adopted by, the said States. either for giving aid to the said Company in the further prosecution of the said work, or for the institution of a

prosecution against the President and Directors of the said Company, for the purpose of annulling and vacating the charter of the said corporation.

“2. *Be it further enacted*, That the Commissioners aforesaid shall report their proceedings under this act, to the Governor of this Commonwealth, as soon as practicable, after they shall have executed the duties prescribed to them by this act.

“3. *Be it further enacted*, That, if the said Commissioners shall deem it necessary to have the aid of the civil engineer, he shall attend the said Commissioners in the execution of the duties prescribed by this act, and shall give to them his advice and assistance as the civil engineer of the State, and assist them in their report.

“4. *Be it further enacted*, That the Governor of this Commonwealth communicate the passage of this act, as soon as possible, to the Governor of Maryland, with a request that it may be laid before the legislative body of that State as soon as practicable.

“5. *Be it further enacted*, That it shall be the duty of the Governor, and he is hereby required, to notify, within convenient time, to each Commissioner, the fact of his appointment; and it shall be the duty of the Board of Public Works to notify to their civil engineer the duties hereby imposed on him, to the intent that they may be severally and strictly performed.

“6. *Be it further enacted*, That each Commissioner appointed under this act, on the part of this State, shall receive four dollars per day for the time he shall be necessarily employed in the performance of the duties prescribed by this act, to be certified by the said Commissioners; and that their chain carriers, and others to be employed by them, shall be entitled to receive such compensation as the Commissioners shall certify to be just and reasonable; and the cost and charges hereby authorized, shall be paid out of the fund for internal improvement, under the superintendency of the Board of Public Works. And the said Commissioners are hereby empowered to obtain, in such manner as they may think best, boats, if necessary, for the purpose of more effectually carrying this act into operation; to be paid for as before directed.”

EXTRACTS FROM ACTS OF THE STATE OF MARYLAND, RELATIVE TO
THE POTOMAC COMPANY.

“*An act for establishing a company for opening and extending the navigation of the river Potomac.*—[Passed November Session, 1784.]

“Whereas the extension of navigation of Potomac river, from tide water to the highest place practicable on the north branch, will be of great public utility, and many persons are willing to subscribe large sums of money to effect so laudable and beneficial a work, and it is just and proper that they, their heirs, and assigns, should be empow-

ered to receive reasonable tolls forever, in satisfaction for the money advanced by them in carrying the work into execution, and the risk they run : And whereas it may be necessary to cut canals and erect locks and other works on both sides of the river, and the Legislatures of Virginia and Maryland, impressed with the importance of the object, are desirous of encouraging so useful an undertaking : Therefore,

“6. *And*, to continue the succession of the said President and Directors, and to keep up the same number. *Be it enacted*, That, from time to time, upon the expiration of the said term for which the said President and Directors were appointed, the proprietors of the said Company, at the next general meeting, shall either continue the said President and Directors, or any of them, or choose others in their stead ; and in case of the death, removal, resignation, or incapacity, of the President, or any of the said Directors, may, and shall, in manner aforesaid ; elect any other person or persons to be President and Directors, in the room of him, or them, so dying, removing, or resigning, and may, at any of their general meetings, remove the President, or any of the directors, and appoint others for and during the remainder of the term for which such person or persons were at first to have acted.

“7. *And be it enacted*, That every President and Director, before he acts as such, shall take an oath or affirmation for the due execution of his office.

“8. *And be it enacted*, That the presence of proprietors, having one hundred shares at the least, shall be necessary to constitute a general meeting, and that there be a general meeting of proprietors on the first Monday of August in every year, at such convenient town as shall be, from time to time, appointed by the said general meeting ; but if a sufficient number should not attend on that day, the proprietors who do attend may adjourn such meeting from day to day till a general meeting of proprietors shall be had, which may be continued from day to day until the business of the company is finished ; to which meeting the President and Directors shall make report, and render distinct and just accounts of all their proceedings, and on finding them fairly and justly stated, the proprietors then present, or a majority of them, shall give a certificate thereof, a duplicate of which shall be entered on the said company's books ; and at such yearly general meetings, after leaving in the hands of the Treasurer such sum as the proprietors, or a majority of them, shall judge necessary for repairs and contingent charges, an equal dividend of all the nett profits arising from the tolls hereby granted, shall be ordered and made to and among all the proprietors of the said company, in proportion to their several shares ; and upon any emergency, in the interval between the said yearly meetings, the said President, or a majority of the said Directors, may appoint a general meeting of the proprietors of the said company, at any convenient town, giving at least one month's previous notice in the Maryland and Virginia Gazettes, which meeting may be adjourned and continued as aforesaid.

"10. *And be it enacted*, That the said river, and the works to be erected thereon, in virtue of this act, when completed, shall forever thereafter be esteemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities, or produce, whatsoever, on payment of tolls imposed by this act; and no other toll or tax whatever, for the use of the water of the said river, and the works thereon erected, shall at any time hereafter be imposed by both or either of the said States, [subject, nevertheless, to such regulations as the Legislatures of the said States may concur in, to prevent the importation of prohibited goods, or to prevent fraud in evading the payment of duties imposed in both or either of the said States, on goods imported into either of them.

"11. And, whereas it is necessary for the making the said canal, locks, and other works, that a provision should be made for condemning a quantity of land for the purpose: *Be it enacted*, That it shall and may be lawful for the said President and Directors, or a majority of them, to agree with the owners of any land through which the said canal is intended to pass, for the purchase thereof; and in case of disagreement, or in case the owner thereof shall be a feme covert, under age, non compos, or out of the State, on application to any two justices of the country in which such land shall lie, the said justices shall issue their warrant, under their hands, to the sheriff of their county, to summon a jury of twenty-four inhabitants of his county, of property and reputation, not related to the parties, nor in any manner interested, to meet on the land to be valued, at a day to be expressed in the warrant, not less than ten, nor more than twenty days thereafter; and the sheriff, upon receiving the said warrant, shall forthwith summon the said jury, and, when met, shall administer an oath or affirmation to every jurymen that shall appear, that he will faithfully, justly, and impartially, value the land, (not exceeding in any case the width of two hundred feet,) and all damages the owner thereof shall sustain by the cutting the canal through such land, according to the best of his skill and judgment, and that in such valuation, he will not spare any person for favor or affection, nor any person grieve for hatred, malice, or ill-will: and the inquisition thereupon taken shall be signed by the sheriff and some twelve or more of the jury, and returned by the sheriff to the clerk of his county, to be by him recorded: and upon every such valuation, the jury is hereby directed to describe and ascertain the bounds of the land by them valued, and their valuation shall be conclusive on all persons, and shall be paid by the said President and Directors to the owner of the land or his legal representative; and, on payment thereof, the said company shall be seized in fee of such land, as if conveyed by the owner to them and their successors by legal conveyance; *Provided*, nevertheless, that if any further damage shall arise to any proprietor of land in consequence of opening such canal, or in erecting such works, than had been before considered and valued, it shall and may be lawful for such proprietor, as often as any such new damage shall happen, by application to, and a warrant from, any two justices of the

county where the lands lie, to have such further damage valued by a jury in like manner, and to receive and recover the same of the said President and Directors; but nothing herein shall be taken or construed to entitle the proprietors of any such lands to recover compensation for any damages which may happen to any mills, forges, or other works or improvements, which shall be begun or erected by such proprietor after such first valuation, unless the same damage is wilfully or maliciously done by the said President and Directors, or some person by their authority.

“14. *And be it enacted*, That it shall and may be lawful for every of the said proprietors to transfer his share or shares, by deed, executed before two witnesses, and registered, after proof of the execution thereof, in the said company's books, and not otherwise, except by devise, which devise shall also be exhibited to the President and Directors, and registered in the company's books; before the devisee or devisees shall be entitled to draw any part of the profits from the said tolls; *Provided*, that no transfer whatsoever shall be made, except for one or more whole share or shares, and not for part of such shares; and that no share shall, at any time, be sold, conveyed, transferred, or held in trust, for the use and benefit, or in the name of another, whereby the said President and Directors, or proprietors of the said company, or any of them, shall or may be challenged, or made to answer concerning any such trust, but that every person appearing as aforesaid to be a proprietor, shall, as to the others of the company, be to every intent taken absolutely as such, but as between any trustee and the person for whose benefit any trust shall be created, the common remedy may be pursued.

“16. *And be it enacted*, That if the said capital, and the other aids already granted by this act, shall prove insufficient, it shall and may be lawful for the said company, from time to time, to increase the said capital, by the addition of so many more whole shares as shall be judged necessary by the said proprietors, or a majority of them, holding at least three hundred shares, present at any general meeting of the said company; and the said President and Directors, or a majority of them, are hereby empowered and required, after giving at least one month's previous notice thereof, in the Maryland and Virginia Gazettes, to open books in the beforementioned places for receiving and entering such additional subscriptions, in which the proprietors of the said company, for the time being, shall, and are hereby declared to have the preference of all others, for the first thirty days after the said books shall be opened as aforesaid, of taking and subscribing for so many whole shares as any of them shall choose; and the said President and Directors are hereby required to observe in all other respects the same rules therein as are by this act prescribed for receiving and adjusting the first subscriptions, and in like manner to return, under the hands of any three or more of them, an exact list of such additional subscribers, with the sums by them respectively subscribed, in the general courts as aforesaid, to be there recorded; and all proprietors of such additional shares, shall, and are hereby declared to be, from thenceforward, incorporated into the said company.

“20. And, to encourage and promote the said undertaking, *Be it enacted*, That if the State of Virginia shall subscribe fifty shares, in such case the Treasurer of the Western Shore be authorized and directed to subscribe, in behalf of this State, a like number of shares, and the money necessary to be paid in consequence of such subscription, shall be paid by this State; and the Treasurer of the Western Shore, for the time being, shall have a right to vote according to such shares, in person, or by proxy appointed by him; and the said Treasurer shall receive the proportion of the tolls aforesaid, which shall, from time to time, be due to the State for the shares aforesaid.

“21. This act, and every part thereof, to be of no effect, unless an act shall be passed by the Legislature of Virginia upon similar principles.”

A supplement to the act, entitled “An act for establishing a company for opening and extending the navigation of the river Potomac.—[Passed at November session, 1785.]

“Whereas the President and Directors of the Potomac Company, by their humble petition to this General Assembly, and the General Assembly of the Commonwealth of Virginia, on behalf of the said company, have set forth that, in pursuance of the acts of Assembly of the Commonwealth of Virginia and this State, entitled *An act for establishing a company for opening and extending the navigation of the river Potomac*, they purpose to make a canal on one level, to be supplied by the current of the river from a little above the Great Falls of Potomac, to a convenient place below those Falls, where they design to effect a communication with the bed of the river by connected locks; and that they are under the strongest impressions, if any canal and locks should be found necessary or useful at the Little Falls of the said river, that another such cut, on one level, and a waste of the whole fall, by a set of locks at tide water, will be preferable there, on every account; and that, as the depth of water in such canals will be increased on the rise of the water in the river, so as to permit an easy passage for all such boats and rafts as can pass in the river, even less than two feet depth of water in the said canals, in dry seasons, with the certain necessary increase on the rise of the river, will be fully sufficient, instead of the four feet required by the said acts, to answer all useful purposes; and, that cutting the said canals four feet below the level of the water in dry seasons, will very greatly and uselessly enhance the expense of the canals, occasion considerable delay in the work, and render it, in a degree, less secure: and have therefore prayed, that acts of both Assemblies may pass, making it necessary that such canals contain two only, instead of the four feet, required by the said acts: or, that, if the level should be broke by locks placed apart from each other, that the first level may necessarily contain only two feet depth,

and the other or rest four : all which suggestions appearing to this General Assembly to be true, and the prayer of the said petition to be reasonable.

“1. *Be it enacted by the General Assembly of Maryland*, That any canal which shall be cut or made on one level by the Potomac Company, at the Great or Little Falls of Potomac river, supplied by the current of that river, containing two feet depth of water at the least, in dry seasons, and communicating again with the river, by locks, if necessary, the spaces between the locks, if they should be placed distant from each other, containing four feet depth of water, shall be equally available, to every intent and purpose ; and the said company shall be entitled to the same tolls, and shall have all the rights whatsoever, as if the whole of such canals had been made to contain four feet depth of water, agreeable to the directions of the said acts ; any thing in the said acts to the contrary notwithstanding.

“3. This act to take place as soon as a similar law shall be passed by the Legislature of the Commonwealth of Virginia.”

A second supplement to the act for establishing a company for opening and extending the navigation of the river Potomac.—[Passed November session, 1786.]

“Whereas the two last Summers have been so unfavorable to the work of making and improving the navigation above the Great Falls in the Potomac river, that the same cannot probably be perfected within the three years limited and allowed by the act for establishing a company for opening and extending the navigation of the river Potomac: Therefore,

“2. *Be it enacted by the General Assembly of Maryland*, That the said Potomac Company shall have, and be allowed, until the seventeenth day of November, one thousand seven hundred and ninety, for making and improving the navigation between the Great Falls and Fort Cumberland ; and that, on the same being done, in the manner prescribed by the said act, before the said seventeenth day of November, the said company shall be entitled to all tolls, profits, and advantages, as if the same were done within the three years allowed by the said act, any thing contained in the said act to the contrary notwithstanding.

“3. This act to take place as soon as a similar law shall be passed by the Legislature of the Commonwealth of Virginia.”

A further supplement to the act for establishing a company for opening and extending the navigation of the river Potomac.—[Passed November Session, 1790.]

Whereas the President and Directors of the Potomac Company, by their humble petition to this General Assembly, and the General Assembly of the Commonwealth of Virginia, on behalf of the said company, for the facts and reasons therein set forth, have prayed, that acts of the said Assemblies may pass, lengthening the time for making and improving the navigation above the Great Falls of the said river ; that none of the forty-six shares not already subscribed for be taken up but on first paying the full amount of the previous calls, and interest from the time the calls ought to have been complied with ; compelling delinquent subscribers to pay interest from the time the money ought to have been paid, with the actual expense of notice, and that the same may be recovered with, and in like manner, as the principal ; enabling foreigners to purchase, subscribe for, and hold shares ; changing the place of collection of tolls at or near Hook's Falls, instead of at or near Payne's Falls ; allowing one third, or such other proportion as the said Assemblies might think reasonable, of the tolls payable at the Great Falls, on the navigation being completed at and through the Falls, and thence to tide water, to be henceforth demandable and received at the Great Falls, and, also, at or near the mouth of Watts's Branch, on goods, commodities, or produce, landed at the Great Falls, or at or near the mouth of Watts' Branch, respectively ; and empowering the President and Directors to apply any part of the capital of the said company, and, also, the tolls, as they may arise, in opening, improving, and extending the navigation on the branches of the said river above Seneca ; which being thought reasonable—

2. *Be it enacted by the General Assembly of Maryland,* That the said Potomac Company have, and be allowed, until the first day of January, one thousand seven hundred and ninety-five, for making and improving the navigation between the Great Falls and Fort Cumberland, and on the same being done in the manner prescribed by the original act, shall be entitled to all tolls, profits, and advantages, as if the same was done within the three years allowed by the same act.

“ 3. *And be it enacted,* That no share in the said company, not already subscribed for, shall be taken up or filled, but on first paying the full amount of all previous calls, with interest from the time the calls ought to have been complied with ; and that delinquent subscribers and holders of shares shall pay interest from the time the money ought to have been paid by them respectively, on any calls made, or to be made, together with the actual expense incurred by the company on serving notice on which to ground a motion for judgment against any such delinquent ; and that the interest shall be recovered with, and in the same manner, as the principal, and the expense of notice shall be taxed with the other costs.

“ 4. *And be it enacted*, That foreigners shall be and are hereby enabled to subscribe for, purchase, and hold shares in the said company.

“ 5. *And be it enacted*, That the tolls which were granted to be demanded and received at or near Payne’s Falls, may be demanded, collected, and received, at or near Hook’s Falls, in the same manner as they might have been collected and received at or near Payne’s Falls aforesaid, and in the stead thereof; and that one third part of such tolls as would be payable at the Great Falls on the navigation being completed at and through those Falls, and thence to tide water, may henceforth, until the whole shall become payable, be demanded, collected, and received, at the Great Falls, and, also, at some convenient place, at or near the mouth of Watts’s Branch, on all goods, commodities, and produce, landed at the Great Falls, or at or near the mouth of Watts’s Branch, respectively, and the same mode may be pursued for compelling payment thereof, as may be lawfully used to compel payment of other tolls to the said company.

“ 6. *And be it enacted*, That the President and Directors of the said company for the time being may, from time to time, apply any part of the capital stock of the said company, and, also, the tolls as they may arise, in opening, improving, and extending, the navigation of the branches of the said river above Seneca: *Provided*, that no such application shall be made until the main river, from tide water, is cleared to Fort Cumberland.

“ 7. This act to take place, and be in force, on a similar act thereto being passed by the General Assembly of Virginia, and not otherwise.

An act to repeal part of an act, entitled a further supplement to the act for establishing a company for opening and extending the navigation of the river Potomac.—[Passed April Session, 1792.]

Be it enacted by the General Assembly of Maryland, That the proviso at the end of the sixth section of the said act, in the following words: “ *Provided*, that no such application shall be made, until the main river, from tide water, is cleared to Fort Cumberland,” be, and the same is hereby, repealed.

An act relating to the Potomac Company, and the navigation of the Potomac river.—[Passed at November Session, 1794.]

Whereas a variety of unforeseen difficulties have occurred in the opening of the Potomac river, and have unavoidably delayed the same being rendered navigable: and whereas it is but reasonable and just that those who have advanced such large sums of money in the prosecution of a work of great public and national importance, and have so nearly effected the same, should have a further reasonable time for the completion thereof: Therefore—

2. *Be it enacted by the General Assembly of Maryland*, That so much of an act of the General Assembly, passed at November session, seventeen hundred and eighty-seven, entitled "An act giving a more speedy remedy against delinquent subscribers to the Potomac Company," shall be, and the same is hereby, repealed; and so much of the act of Assembly, entitled "An act for establishing a company for opening and extending the navigation of the river Potomac," as directed the sale of the shares of delinquent subscribers, shall be and remain in full force and effect.

3. *And be it further enacted*, That the time for completing the navigation of the Potomac river be, and is hereby, further extended until the first day of January, seventeen hundred and ninety-eight; and that no privilege or advantage granted by law, shall be forfeited or lost, in case the navigation aforesaid shall be finished within the time hereby limited; any thing in any act to the contrary notwithstanding.

4. *And be it further enacted*, That the several tolls made payable by the act of the General Assembly, entitled "An act for establishing a company for opening and extending the navigation of the river Potomac," at Payne's Falls, shall, instead thereof, be payable at Hook's Falls; and the tolls by said act made payable at the Great Falls, shall be made payable at the Great Falls and at Watts's Branch, in such proportion as shall be directed by the President and Directors of the Potomac Company; and that the tolls by said act made payable at the mouth of the South Branch, shall be, and are hereby, made payable at some convenient place between the mouths of Great Cacapeton and Conococheague, to be appointed by the President and Directors of the Potomac Company; any thing in any former act or acts of Assembly to the contrary notwithstanding.

An act for enlarging the capital of this State in the Potomac Company.—[Passed November Session, 1795.]

1. *Be it enacted by the General Assembly of Maryland*, That the Treasurer of the Western Shore of this State be, and he is hereby, authorized and directed to subscribe, in behalf of this State, forty shares in the augmented capital of the Potomac Company, and to pay the sum of five hundred and seventy-seven dollars and seventy-eight cents on each of said shares; and the said Treasurer shall receive the proportion of tolls which shall, from time to time, be due to the State for the said shares; and the said Treasurer shall have a right to vote for said shares in person, or by proxy appointed by him.

2. *And be it enacted*, That the Treasurer shall not subscribe for any share in the said Company, until the President thereof shall notify to him, in writing, that the whole of the residue of the said shares are subscribed for; and the payment of the shares subscribed

for by the Treasurer, shall be made at the times, and in the proportion, required of the individual stockholders in the said augmented capital.

A supplement to the act for enlarging the capital of this State in the Potomac Company.—[Passed November Session, 1795.]

Whereas, by an act, entitled An act for enlarging the capital of this State in the Potomac Company, passed at this present session of Assembly, the President and Directors of the Company for opening and extending the navigation of the river Potomac have augmented the capital of said Company to one hundred shares more, and the Treasurer of this State is authorized and directed, upon the terms and conditions therein expressed, to subscribe, on behalf of the State, for forty shares in the said augmented capital—

2. *Be it enacted by the General Assembly of Maryland, That, unless the President and Directors aforesaid, shall dispose of sixty shares of the said augmented capital for the sum of one hundred and thirty pounds sterling each share, they shall have no authority to call for, or receive from, the Treasurer of this State, any subscription for any part of the said augmented capital which, by the said act, he is authorized to subscribe, nor for any payment of the said subscription, but in the same proportion as the other subscribers to the said augmented capital shall, from time to time, pay and advance to the said President and Directors the amount of their respective subscriptions, nor until the said President and Directors shall certify to the said Treasurer, under their hands, that the preceding instalments have been paid on every share of said augmented capital.*

An act to authorize and empower the President and Directors of the Potomac Company to contract the breadth of the locks at the Great Falls of Potomac.—[Passed November Session, 1796.]

“Whereas, by an act of the General Assembly, passed November session, one thousand seven hundred and eighty-four, entitled An act for establishing a company for opening and extending the navigation of the river Potomac, it is, amongst other things, provided, that the tolls therein established shall be payable only on condition the said Potomac Company shall make the river well capable of being navigated, in dry seasons, from Payne’s Falls to the Great Falls, by vessels drawing one foot water, and from the Great Falls to tide water, and shall, at or near the Great Falls, make a cut or canal twenty-five feet wide, and four feet deep, with sufficient

locks, if necessary, each of eighty feet in length, sixteen feet in breadth, and capable of conveying vessels or rafts drawing four feet water at the least: And whereas it is represented to this General Assembly, by the President and Directors of the Potomac Company, that the breadth of the locks as above directed is unnecessarily great, and that the contraction of the same to the breadth of fourteen feet would render the said locks more complete, and considerably lessen the expense of finishing the same—

“2. *Be it enacted by the General Assembly of Maryland, That the President and Directors of the said Potomac Company, or a majority of them, be, and they are hereby, authorized and empowered to contract the locks at the Great Falls of Potomac to any breadth they may think proper, provided the same be not of less breadth than fourteen feet; and that, when the said locks are completed of the breadth hereby authorized, the said company be entitled to all the tolls, benefits, and advantages therefrom, which, by law, they would be, provided the said locks had been completed of the breadth of sixteen feet, any thing in any act to the contrary notwithstanding.*”

An act to authorize the Potomac Company to receive tolls on produce carried through the canal at the Great Falls, and for other purposes therein mentioned—[Passed November Session, 1797.]

“Whereas the Potomac Company have by their petition set forth to this General Assembly, that they have at a great expense removed most of the obstructions in the Potomac river, from Savage river to tide water, except those at the Great Falls; that considerable quantities of produce are now brought down by boats to Williamsport, Watts’s Branch, and the Great Falls, by which much time, labor, and expense, are saved to the owners of such produce; that many articles are now transported through the locks at the Little Falls without paying any toll whatever; that the company, to facilitate the transportation of produce down said river, have constructed an inclined plane from the lower end of the canal to the surface of the river below the Great Falls, by means of which machine all articles can be let down, and those not of great bulk or weight taken up, with security and despatch; that a warehouse is also provided for storing such articles when found necessary, or when boats are not ready for transporting said produce down the said river; that those now navigating the said river receive great benefit from the improvement of the navigation by the labor and expenditures of said company; they conceive it to be just and reasonable that they should make some compensation for the benefits received; all which appears to be reasonable: Therefore,

“2. *Be it enacted by the General Assembly of Maryland, That the Potomac Company be, and hereby are, authorized and empowered*

to receive, at or near the mouth of Conococheague, the tolls payable at that place on articles transported thither, also, the tolls payable at Watts's Branch and the Great Falls, upon all articles brought down to those places, or either of them, in the same manner as if the locks at the Great Falls were now complete; and, also, to receive the tolls upon such articles as are brought up the river to the Great Falls: *Provided*, That the said company, at their own expense, carry all produce brought to the said inclined plane down or up the same, as the case may be, and, if required, store the said produce, or deliver it along side the said boats in which it is intended to be carried down the river, at their own risk and cost.

"3. *And be it enacted*, That the said Potomac Company be authorized and empowered, and are hereby authorized and empowered, to receive on all articles transported through the locks finished and completed at the Little Falls, the same rates and tolls payable on said articles at Hook's Falls, and at or near the mouth of Conococheague, provided such articles have not before paid any tolls at any other place in said river above the said Little Falls.

"4. *And be it enacted*, That the time for completing the navigation of Potomac river be, and is hereby, further extended until the first day of January, eighteen hundred and three, and that no privilege or advantage granted by law shall be forfeited or lost, in case the navigation aforesaid shall be finished within the time hereby limited, any thing in any act to the contrary notwithstanding."

An act concerning the Potomac Company.—[Passed November Session, 1802.]

"Whereas the object contemplated by the act of Assembly for establishing a company for opening and extending the navigation of the river Potomac, has been accomplished,

"2. *Be it enacted by the General Assembly of Maryland*, That the proprietors of shares in the said Potomac Company, their heirs and assigns, shall and may demand, take, and receive, tolls, at the several and respective places heretofore fixed by law for the payment and receipt thereof, to wit: at or near the mouth of Conococheague, Hook's Falls, the Great Falls, and the Little Falls, according to the rates heretofore established; and all and every of the rights, interests, privileges, and immunities, heretofore granted to, or vested in, the said proprietors and Potomac Company, are hereby confirmed and established to them, their heirs and assigns, and successors.

"3. *And be it further enacted*, That the locks erected at the Great Falls of the breadth of twelve feet, shall be as available in law, and shall be deemed and taken of the same force and virtue, as if the same were of the breadth of fourteen feet: and hereafter, when new locks are erected, or old ones repaired, they shall be erected and re-

paired of such breadth and length, and of such material, as a general meeting of the proprietors shall deem most conducive to the public interest and convenience; provided, that no lock shall be less than eighty feet in length, and twelve feet in breadth."

An act allowing further time to the Potomac Company for completing the navigation of the Potomac river, and for other purposes. [Passed November Session, 1809.]

"Be it enacted by the General Assembly of Maryland, That the further time of ten years, to be computed from the expiration of the term already granted, shall be, and is hereby, allowed the Potomac Company to complete the navigation of the Potomac river."

An act further supplementary to the act, entitled "An act for establishing a Company for opening and extending the navigation of the river Potomac."—[Passed November Session, 1811.]

Whereas doubts have arisen whether the act of Assembly, entitled "a further supplement to the act for establishing a company for opening and extending the navigation of the river Potomac," passed at November session, seventeen hundred and ninety, authorizes the President and Directors of the said Company to condemn lands on the branches of the Potomac river, for the purpose of making canals and locks, in improving the navigation of such branches, and to make agreements with the proprietors of lands whereby the water may be used for navigation—

Be it enacted, That the President and Directors shall be, and they are hereby, authorized and empowered to exercise the same powers, and to pursue the same measures, for acquiring and condemning lands for the purposes aforesaid on the branches of said river, and under the same restrictions as are given and directed by the fourth, eleventh and thirteenth sections of the act of Assembly, passed at November session, seventeen hundred and eighty four, entitled "An act for establishing a company for opening and extending the navigation of the river Potomac," relative to the acquiring and condemning lands for erecting locks and making canals on that river; and moreover, the said President and Directors of the said Company shall have on the said branches power to agree with the proprietors of the adjacent lands as to the manner of erecting dams and conducting the water, so as to answer the purposes of navigation in such places as in the opinion of the said President and Directors it may be conveniently done: *Provided, nevertheless*, that the privileges and power by this act conferred shall be construed to extend only to the principal branches or streams emptying into the Potomac, to wit: The

Monocacy, Antietam, and Conococheague, leaving the others and smaller ones free and unoperated upon or bound by this act.

And whereas persons owning land on the said branches, may be desirous to improve the same for the purposes of manufacture, the said President and Directors are hereby fully authorized and empowered to grant to the said persons the privilege of using the surplus water for said purposes from time to time as they may be required so to do.

Resolutions passed by the General Assembly of the State of Maryland, at December Session, 1820.

Resolved, That the Governor, by and with the advice and consent of the Council of this State shall appoint two commissioners, to meet such commissioners as may be appointed on the part of the State of Virginia, whose duty it shall be to examine into and report the state of the navigation of the Potomac river and its branches, and to inquire into and report the situation and condition of the affairs of the Potomac Company, the amount and character of its receipts and expenditures, and to advise and consult with the commissioners on the part of the State of Virginia, as to the measures most advisable to be recommended to, and conjointly adopted by, the said States, either for giving aid to the said company in the further prosecution of the said work, or for the more effectual improvement of the navigation of the said river, by such other means as may be deemed most expedient.

Be it further resolved, That the commissioners aforesaid shall report their proceedings, under these resolutions, to the Governor of the State, as soon as practicable, after they shall have executed the duties prescribed to them by these resolutions.

Be it further resolved, That the Governor of the State communicate the passage of these resolutions, as soon as possible, to the Governor of Virginia, with a request that it may be laid before the General Assembly of that State, as soon as practicable.

Be it further resolved, That the Governor be requested to notify, within convenient time, each commissioner of his appointment.

Be it further resolved, That each commissioner, appointed under these resolutions, on the part of this State, shall receive four dollars per day, for the time he shall be necessarily employed in the performance of the duties prescribed by this act, to be certified by the said commissioners, and that their chain carriers and others to be employed by them, shall be entitled to receive such compensation as the commissioners shall certify to be just and reasonable; and the cost and charges hereby authorized, shall be paid out of any unappropriated money in the Treasury, under the direction of the Governor and Council of this State; and the said commissioners are hereby empowered to obtain, in such manner as they may think best, boats, if necessary, for the purpose of more effectually carrying the provisions of these resolutions into operation, to be paid for as before directed.

F.

Extract from the Proceedings of sundry citizens of Baltimore, convened for the purpose of devising the most efficient means of improving the intercourse between that City and the Western States.

BALTIMORE, February 12, 1827.

At a meeting of a number of citizens to take into consideration the best means of restoring to the City of Baltimore, that portion of the Western Trade, which has lately been diverted from it by the introduction of Steam navigation, and by other causes, William Patterson, Esq. was appointed Chairman, and David Winchester, Secretary.

Various documents and statements, illustrating the efficiency of Rail Roads, for the conveying of articles of heavy carriage, at a small expense, were produced and examined; and the superior advantage of this mode of transportation, over turnpike roads or canals, in many situations being, according to those statements, satisfactorily shewn, it was, on motion, *Resolved*, That the said documents be referred to a Committee, whose duty it shall be to examine the same, together with such other facts and experiments as they may be able to collect; and when prepared, to report their opinion thereon, and on the course it may be deemed proper for this meeting to pursue.

Resolved, That Philip E. Thomas, Benjamin C. Howard, George Brown, Talbot Jones, Joseph W. Patterson, Evan Thomas, and John V. L. M'Mahon, compose the said Committee.

Adjourned to meet on Monday evening, the 19th instant.

At a meeting held pursuant to the foregoing adjournment, Feb. 19. 1827, William Patterson Esq. was called to the chair, and David Winchester was appointed Secretary. The Committee produced the report from which, and the proceedings thereon, the following paragraphs are extracted:

The Committee to whom was referred sundry documents and statements, illustrating the relative or comparative advantages of Canals and Rail-Roads, for connecting the trade of the City of Baltimore with the Western States, having carefully examined the said documents and statements, together with such additional facts and evidences as they have been able to collect, beg leave now to submit the following report:

“ In conclusion, the Committee beg leave to refer to the annexed Tables, numbered from 1 to 7, in which they have arranged, under a condensed form, some of the more important facts and statements embraced in this report. The Committee have also in these Tables contrasted the advantages, which, in their opinion, would be likely to accrue to the City of Baltimore, from connecting her Trade with the Western States, by intersecting the contemplated Chesapeake and Ohio Canal within the District of Columbia, and by **A DIRECT RAIL ROAD FROM BALTIMORE TO SOME ELIGIBLE POINT ON THE OHIO RIVER,**

All which is respectfully submitted.

PHILIP E. THOMAS, *Chairman of the Com'tee.*

The report being read and considered, was unanimously approved by the meeting. Whereupon it was, on motion,

Resolved, That immediate application be made to the Legislature of Maryland, for an act incorporating a joint stock company, to be styled “The Baltimore and Ohio Rail Way Company,” and clothing such company with all the powers necessary to the construction of a Rail Road, with two or more sets of rails, from the city of Baltimore to the Ohio river.

Resolved, That the capital stock of said company shall be Five Millions of Dollars, but that the company shall be incorporated, and provision shall be made by said act for its organization, upon the subscription of One Million of Dollars to said stock, and that the said company shall have power to increase the capital stock thereof, so far as may be necessary to effect said objects.

Resolved, That it is expedient and proper, in said act, to permit subscriptions of stock to the same, to be made by the United States, by States, Corporations or Individuals; and to provide that as soon as the said act shall have been passed by the Legislature of Maryland, subscription books may be opened, subscriptions received, the company organized, and the said road constructed, so far as it may lie within the limits of the State of Maryland; and that the assent of the Legislatures of Pennsylvania and Virginia to the said act shall be obtained as speedily as possible, but shall be made necessary, only so far as, in constructing the said road, it shall be found necessary to pass through their respective States.

Resolved, That a Committee, consisting of 25 members, be appointed by the Chairman of this meeting, whose duty it shall be to prefer an application to the legislature of Maryland for such an act of incorporation.

The following Committee was then appointed to carry into effect the object of the meeting, to wit:

Charles Carroll, of Carrollton,
 William Patterson,
 Isaac M'Kim,
 Robert Oliver,
 Charles Ridgely, of Hampton.
 Thomas Tennant,
 Alexander Brown,
 John M'Kim, Jun.
 Talbot Jones,
 James Wilson,
 Thomas Ellicott,
 George Hoffman,
 William Steuart,

Philip E. Thomas,
 William Lorman,
 George Warner,
 Benj. C. Howard,
 Solomon Etting,
 W. W. Taylor,
 Alexander Fridge,
 James L. Hawkins,
 John B. Morris,
 Luke Tiernan
 Alexander M'Donald,
 Solomon Birkhead.

*The meeting then adjourned, *sine die*.

WILLIAM PATTERSON, *Chairman*.

DAVID WINCHESTER, *Secretary*.

TABLE No. 1.

Estimated difference in the distance between connecting the city of Baltimore with the western trade, by a continuous Canal, intersecting the eastern termination of the proposed "Chesapeake and Ohio Canal," within the District of Columbia, and of connecting Baltimore with this trade by a Rail Way, direct from that city to some suitable point on the Ohio river.

The United States' Engineers report the length of the "Chesapeake and Ohio Canal," from the city of Washington to Pittsburgh, on the Ohio river, to be - - - 341½ miles.

Estimated length of a Canal from Baltimore, to intersect the "Chesapeake and Ohio Canal," at Washington, - - - - - 48½ miles.

Whole distance of a Canal by this route, from Baltimore to Pittsburgh, - - - - - 390 miles.

Estimated distance of a Rail Road, from the city of Baltimore to Wheeling, or some other suitable point on the Ohio River, - - - -	250 miles.
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Distance saved by a Rail Road, - - - -	<u>140 miles.</u>
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TABLE No. 2.

Comparative cost of constructing a Canal communication between the city of Baltimore and the Ohio river, by the proposed route of the "Chesapeake and Ohio Canal," and by the proposed *direct* Rail Road communication between Baltimore and that river.

The United States' Engineers estimate the cost of the proposed Canal from Washington to Pittsburg, to be (\$22,375,427,) twenty-two millions, three hundred and seventy five thousand, four hundred and twenty-seven dollars; but we will suppose it could be made for one half of this sum, or - \$11,000,000 00

To which should be added the cost of constructing a continuous Canal from the city of Baltimore to the eastern termination of the "Chesapeake and Ohio Canal," at Washington, that being the only point at which we can intersect it, - \$ 1,000,000 00

\$12,000,000 00

The highest estimated cost of a Rail Road from Baltimore to the Ohio river, calculating the same to cost \$20,000 per mile, (and this is believed to be a very high estimate,) would be - \$ 5,000,000 00

Amount of capital saved in favor of a Rail Road, \$ 7,000,000 00

TABLE No. 3.

Estimated difference of expense on transportation for tolls only, by the proposed canals from Baltimore through the District of Columbia to Pittsburg, and by a direct Rail-Road route from Baltimore to some point on the Ohio river.

The United States' Engineers estimate the cost of transportation, by the proposed Chesapeake and Ohio Canal, at the rate of $1\frac{1}{2}$ cents for each ton per mile—taking the whole distance then from Baltimore to Pittsburg, as is shown in Table No. 1, to be 390 miles; the tolls for conveying a ton of freight from Baltimore, the whole distance along this canal would be - - \$5 85

Tolls for carrying the same freight along the proposed Rail Road at the same rate per mile, the distance being 250 miles, would be - - - - - \$3 75

Amount of freight saved per ton in favor of a Rail-Road, at the same charge for tolls, would be - - - - - \$2 10

In order, however, to show the actual saving by the Rail-Road, it is necessary to remark, that the proposed charge along it, is not $1\frac{1}{2}$ cents per ton each mile, as charged on the canal, but one cent per ton each mile, and this will give a further advantage in favor of the road on each ton of - - - - - \$1 25

Making the difference per ton in favor of the Rail-Road, to be - - - - - \$3 35

TABLE No. 4.

Estimate of the income which the proposed Rail-Road from Baltimore to some point on the Ohio river, would annually yield, computing the freight which would pass upon this road to be only 150,000 tons, from West to East, and the amount that would pass from East to West, to be 50,000 tons.

150,000 tons from West to East, at 1 cent per ton per mile, being the New York canal price, - - - - -	\$375,000 00
50,000 tons from East to West, at 3 cents per ton per mile, being the New York canal price - - - - -	\$375,000 00
Total amount of tolls, - - - - -	<u>\$750,000 00</u>

TABLE No. 5.

Estimate of profits to the holders of stock in the proposed Baltimore and Ohio Rail-Road.

Expense of constructing the proposed road, being estimated at \$20,000 per mile, and the distance being assumed to be 250 miles, would make the whole cost five millions of dollars - - - - -	\$5,000,000 00
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Six per cent. interest on the above capital invested, would be - - - - -	\$300,000 00
Income from tolls as is shown by Table No. 4 - - - - -	<u>\$750,000 00</u>

Which leaves \$450,000 00 for repairs, contingent expenses, and surplus dividends - - - - -	<u>\$450,000 00</u>
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TABLE No. 6.

Estimated difference of the time it would take for conveying freight from Baltimore to Pittsburg, by the *proposed* Chesapeake and Ohio Canal, between those places, (through the District of Columbia,) and by a *direct* Rail Road from Baltimore to some point on the Ohio river.

The United States' Engineers, (page 38,) estimate the time it will take to travel with loaded boats from Washington to Pittsburg, to be - - - - - 188 hours.

The distance between these points being 341 miles, we have only to add the same rate of travelling for the additional distance from Baltimore to Washington, say $48\frac{1}{2}$ miles, and the additional time will be - $26\frac{1}{2}$ hours.

Time employed in passing on the proposed Canals, from Baltimore to Pittsburg, - - - - - $214\frac{1}{2}$ hours.

There is abundant evidence to prove, from authentic documents published, that the rate of travelling upon Rail Roads, with the locomotive engines, in England, (and this has been sufficiently shewn to be the cheapest means,) is with heavy loaded wagons, from four miles to six miles and even eight miles per hour; assuming however the slowest rate, and the passage will be made from Baltimore to the Ohio river, say 250 miles, at the rate of 4 miles per hour, is - $62\frac{1}{2}$ hours.

Time saved in favor of the Rail Road, each trip, 152 hours.

TABLE No. 7.

Synopsis of the 6 preceding Tables.

TABLE 1.

<i>Distance</i> between Baltimore and Pittsburg, by the <i>proposed</i> Chesapeake and Ohio Canal, - - -	390 miles.
<i>Distance</i> from Baltimore to the Ohio river by the <i>proposed</i> Rail Road, - - - - -	250
Distance saved by the road	<u>140 miles.</u>

TABLE 2.

<i>Smallest estimated cost</i> of the proposed Chesapeake and Ohio Canal, - - - - -	\$12,000,000
<i>Highest estimated cost</i> of the contemplated Rail Road, - - -	5,000,000
Amount of capital saved in favor of the Road,	<u>\$7,000,000</u>

TABLE 3.

<i>Cost of transporting, for Tolls only, on a ton of freight from Pittsburg to Baltimore, upon the Chesapeake and Ohio Canal,</i>	\$5 85
<i>Cost of same transportation by the proposed Rail Road,</i>	2 50
	<hr/>
Tolls saved on each ton, by the Rail Road,	\$3 35

TABLES 4 & 5.

<i>Annual income from Tolls upon the proposed Rail Road</i>	\$750,000
<i>6 per cent. interest on the capital invested,</i>	300,000
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<i>Annual surplus profits to be appropriated for repairs and extra dividends,</i>	\$450,000

TABLE 6.

<i>Time employed in passing a Boat from Baltimore to Pittsburg, by the Chesapeake and Ohio Canal,</i>	214 $\frac{1}{3}$ hours.
<i>Time to pass from Baltimore to the Ohio river, upon the proposed Rail Road,</i>	62 $\frac{1}{2}$ hours.
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Time saved by the Road, each trip,	152 hours.
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The following gentlemen compose the Board of President and Directors of the Baltimore and Ohio Rail Road Company.

Philip E. Thomas, <i>President</i>	William Lorman
Charles Carroll, of Carrollton	John B. Morris
William Patterson	Isaac McKim
Robert Oliver	Patrick Macaulay
Alexander Brown	William Steuart
George Hoffman	Solomon Etting
Alexander Fridge	Talbot Jones.

Extract from the proceedings of the Chesapeake and Ohio Canal Convention held at the city of Washington on the 6th of December, 1826.

Among others who appeared as Delegates to the said Convention, were the following gentlemen :

From Baltimore city—Present, Solomon Etting, Benjamin C. Howard, William Lorman, Isaac McKim, Joseph W. Patterson, and Philip E. Thomas.

The following gentlemen, also appointed Delegates to the Convention by the city of Baltimore, were absent : Thomas Ellicott, Roger B. Taney, Luke Tiernan.

The Central Committee having made their report, recommending the adoption of certain resolutions, and the first of the said resolutions being under consideration, to wit :

Resolved, That it will be expedient to obtain such an amendment of the charter of the Chesapeake and Ohio Canal Company as shall authorize the company to terminate, if they deem proper, the eastern section of the said canal at or near the town of Cumberland; and to extend, by any route therefrom, the western section of the said canal across the Alleghany to Pittsburg, or to substitute therefor a railway; and in the event that such a change shall be deemed expedient in the route now prescribed by the charter, to defer the extension of a canal along the Potomac from Cumberland to the mouth of Savage, and to reduce the dimensions thereof to a breadth less than that now required:

Mr. Kennedy moved to strike out the words "or to substitute therefor a railway."

Mr. Key moved to add, "or such other mode of transportation as they may find expedient."

Mr. Kennedy's motion was negatived.

The resolution was adopted, by adding to the resolution of the Central Committee, after the word "railway," "or turnpike road on that portion of the route, or any part thereof, designated in the report of the Board of Internal Improvement, of the 23d of October, 1826, as the middle section, or on that part of the route by Savage, which corresponds therewith."

The second resolution recommended by the Central Committee, in the following words, was then taken up:

Resolved, That it will be expedient to address a memorial to the Congress of the United States, requesting a subscription to the stock of the said canal, and a like memorial to the Legislatures of Virginia, Maryland, and Pennsylvania; and that an application be made to the cities of Washington, Georgetown, and Alexandria, to aid, by a similar subscription, the stock of the said company.

On motion of Mr. Etting, the word "Baltimore" was added, after the word "Alexandria," in the foregoing resolution.

The foregoing resolutions were, it is believed, adopted *unanimously* by the Convention.

AN ACT TO INCORPORATE THE BALTIMORE AND OHIO RAIL-ROAD
COMPANY.

[PASSED FEBRUARY 28, 1827.]

1. *Be it enacted by the General Assembly of Maryland.* That Isaac M'Kim, Thomas Ellicott, Joseph W. Patterson, John M'Kim, Junior, William Stewart, Talbot Jones, Roswell L. Colt, George Brown, and Evan Thomas, be and they are hereby appointed commissioners, under the direction of a majority of whom subscriptions may be received to the capital stock of the Baltimore and Ohio Rail-Road Company, hereby incorporated; and they, or a majority of them, may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, after having given such notice of the times and places of opening the same as they may deem proper; and that, upon the first opening of said books, they shall be kept open for at least ten successive days, from 10 o'clock, A. M. until 2 o'clock, P. M., and if, at the expiration of that period, such a subscription to the capital stock of said company as is necessary to its incorporation, shall not have been obtained, the said commissioners, or a majority of them, may cause the said books to be opened, from time to time, after the expiration of the said ten days, for the space of twelve months thereafter, or until the sum necessary to the incorporation of the company shall be subscribed, if sooner subscribed; and, if any of the said commissioners shall die, resign, or refuse to act, during the continuance of the duties devolved upon them by this act, another may be appointed in his stead, by the remaining commissioners, or a majority of them.

2. *And be it enacted,* That the capital stock of the said Baltimore and Ohio Rail Road Company shall be three millions of dollars, in shares of one hundred dollars each, of which ten thousand shares shall be reserved for subscription by the State of Maryland, and five thousand for the City of Baltimore, for the space of twelve months after the passage of this act by the Legislature of Maryland, and the remaining fifteen thousand shares may be subscribed for by any other corporation, or by individuals; and that as soon as ten thousand shares of the said capital stock shall be subscribed, the subscribers of the said stock, their successors, and assigns, shall be, and they are hereby declared to be, incorporated into a company, by the name of The Baltimore and Ohio Rail Road Company, and by that name shall be capable, in law, of purchasing, holding, selling, leasing, and conveying, estates, real, personal, and mixed, so far as shall be necessary for the purposes hereinafter mentioned, and no further; and shall have perpetual succession, and by said corporate name may sue and be sued, and may have and use a common seal, which they shall have power to alter or renew at their pleasure, and shall have,

enjoy, and may exercise, all the powers, rights, and privileges, which other corporate bodies may lawfully do, for the purposes mentioned in this act.

3. *And be it enacted*, That if more than fifteen thousand shares shall be subscribed to the capital stock of said company, not reserved to the State of Maryland, or to the City of Baltimore, the said commissioners, or a majority of them, shall reduce the subscription to fifteen thousand shares, by striking off from the largest number of shares in succession, until the subscriptions are reduced to fifteen thousand shares, or all the subscriptions to one share; and if there be still an excess, then lots shall be drawn by the commissioners, to determine who are to be excluded.

4. *And be it enacted*, That upon every such subscription there shall be paid, at the time of subscribing, to the said commissioners, or to their agents, appointed to receive such subscriptions, the sum of one dollar on every share subscribed, and the residue thereof shall be paid in such instalments, and at such times, as it may be required by the president and directors of said company: *Provided*, That not more than one-third of the subscription be demanded in any one year from the commencement of the work, nor any payment demanded until at least sixty days' public notice of such demand shall have been given by the said president and directors; and if any subscriber shall fail or neglect to pay any instalment, or part of said subscription, thus demanded, for the space of sixty days next after the time the same shall be due and payable, the stock on which it is demanded shall be forfeited to the company, and may be sold by the said president and directors, for the benefit of the company; but the president and directors may remit any such forfeiture on such terms as they shall deem proper.

5. *And be it enacted*, That if the subscription herein made necessary to the incorporation of the said company, shall not be obtained within twelve months after the first opening of the subscription books by the said commissioners, this act, and all the subscriptions under it, shall be null and void; and the said commissioners, after discharging the expenses of opening the books, shall return the residue of the money paid in upon such subscriptions, to the several subscribers, in proper proportions to the sums respectively paid in by them.

6. *And be it enacted*, That, at the expiration of the ten days for which the books are first opened, if ten thousand shares of said capital stock shall have been subscribed, or if not, as soon thereafter as the same shall be subscribed, if within one year after the first opening of the books, the said commissioners, or a majority of them, shall call a general meeting of the subscribers at such time and place as they may appoint, and shall give at least twenty days' public notice thereof; and at such meeting the said commissioners shall lay the subscription books before the subscribers then and there present, and thereupon the said subscribers, or a majority of them, shall elect twelve directors, by ballot, to manage the affairs of said company; and these twelve directors, or a majority of them, shall have the

power of electing a president of said company, either from among the directors or others, and of allowing him such compensation for his services as they may deem proper; and that, in said election, and on all other occasions wherein a vote of the stockholders of said company is to be taken, each stockholder shall be allowed one vote for every share owned by it, him, or her, and every stockholder may depute any other person to vote and act for it, him, or her, as its, his, or her proxy, and the commissioners aforesaid, or any three or more of them, shall be judges of the said first election of directors.

7. *And be it enacted,* That, to continue the succession of the president and directors of said company, twelve directors shall be chosen annually, on the second Monday of October in every year, in the City of Baltimore, by the stockholders of said company, and that the State of Maryland and the City of Baltimore may each appoint one additional director of said company for every twenty-five hundred shares of stock of said company by them respectively owned at the time of such election, but shall not be permitted to vote upon their stock in the election of the directors by the stockholders, in general meeting; and that the directors of said company, or a majority of them, shall have power to appoint judges of all elections, and to elect a president of said company, either from amongst the directors, or others, and to allow him such compensation for his services as they may deem proper; and, if any vacancy shall occur by death, resignation, or refusal to act, of any president or director, before the year for which he was elected has expired, a person to fill such vacant place, for the residue of the year, may be appointed by the president and directors of said company, or a majority of them; and that the president and directors of the company shall hold and exercise their offices until a new election of president and directors; and that all elections which are, by this act, or the by-laws of said company, to be made on a particular day, or at a particular time, if not made on such day, or at such time, may be made at any time within thirty days thereafter.

8. *And be it enacted,* That a general meeting of the stockholders of said company shall be held annually, at the time and place appointed, for the election of the president and directors of said company; that they may be called at any time during the interval between said annual meetings, by the president and directors, or a majority of them, or by the stockholders owning at least one fourth of the whole stock subscribed, upon giving thirty days' public notice of the time and place of holding the same; and when any such meetings are called by the stockholders, such notice shall specify the particular object of the call; and if at any such called meetings a majority (in value) of the stockholders of said company, are not present in person or by proxy, such meetings shall be adjourned from day to day, without transacting any business, for any time not exceeding three days, and if within the said three days, stockholders having a majority (in value) of the stock subscribed do not thus attend, such meeting shall be dissolved.

9. *And be it enacted*, That at the regular annual meetings of the stockholders of said company, it shall be the duty of the president and directors, in office for the preceding year, to exhibit a clear and distinct statement of the affairs of the company; that at any called meetings of the stockholders, a majority of those present may require similar statements from the president and directors, whose duty it shall be to furnish them when thus required, and that at all general meetings of the stockholders, a majority (in value) of all the stockholders in said company may remove from office any president, or any of the directors of said company, and may appoint others in their stead.

10. *And be it enacted*, That every president and director of said company, before he acts as such, shall swear, or affirm, as the case may be, that he will well and truly discharge the duties of his said office, to the best of his skill and judgment.

11. *And be it enacted*, That if any of the said fifteen thousand shares of the capital stock of said company, not reserved to the city of Baltimore, or to the State of Maryland, shall remain unsubscribed until the organization of the said company, or if the shares of said capital stock herein before reserved to the said State or City, or any part of them, shall be subscribed by said State or City respectively, during the time for which such stock is reserved for them, in either case the president and directors of the said company, or a majority of them, shall have power to open books, and to receive subscriptions to any of the capital stock of said company which may thus remain unsubscribed for, or to sell or dispose of such unsubscribed stock for the benefit of the company, for any sum not under its par value; and the purchasers or subscribers of such stock shall have all the rights, powers, and privileges, of original subscribers, and shall be subject to the same regulations.

12. *And be it enacted*, That the said president and directors, or a majority of them, may appoint all such officers, engineers, agents, or servants whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have power to determine, by contract, the compensation of all the engineers, officers, agents, or servants, in the employ of said company, and to determine, by their by-laws, the manner of adjusting and settling all accounts against the company, and also the manner and evidence of transfers of stock in said company; and that they, or a majority of them, shall have power to pass all by-laws which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying the objects of this act into effect—*Provided, only*, That such by-laws shall not be contrary to the laws of the United States, or the laws of any of the States assenting to this act, or any of the provisions of this act.

13. *And be it enacted*, That if the capital stock of said company shall be deemed insufficient for the purposes of this act, it shall and may be lawful for the president and directors of said company, or a

majority of them, from time to time, to increase the said capital stock, by the addition of as many shares as they may deem necessary, for which they may at their option cause subscriptions to be received in the manner prescribed by them, or may sell the same for the benefit of the company, for any sum not under their par value; and that they, or a majority of them, shall have power to borrow money for the objects of this act, to issue certificates or other evidences of such loans, and to pledge the property of the company for the payment of the same, and its interest.

14. *And be it enacted,* That the president and directors of said company shall be and they are hereby invested with all the rights and powers necessary to the construction and repair of a rail road from the city of Baltimore, to some suitable point on the Ohio river to be by them determined, not exceeding sixty-six feet wide, with as many sets of tracts as the said president and directors, or a majority of them, may deem necessary; and they, or a majority of them, may cause to be made, or contract with others for making, said rail road, or any part of it; and they, their agents, or those with whom they may contract for making any part of the same, or their agents, may enter upon and use, and excavate, any land which may be wanted for the site of said road, or the erection of warehouses, or other works necessary to said road, or for any other purpose necessary or useful in the construction or repair of said road, or its works, and that they may build bridges, may fix scales and weights, may lay rails, may take and use any earth, timber, gravel, stone, or other materials, which may be wanted for the construction or repair of any part of said road, or any of its works; and may make and construct all works whatsoever, which may be necessary and expedient, in order to the proper completion of said road; and that they, or a majority of them, may make, or cause to be made, lateral rail roads, in any direction whatsoever, in connexion with said rail road from the city of Baltimore to the Ohio river, and in the construction of the same, or their works, shall have, possess, and may exercise, all the rights and powers hereby given to them, in order to the construction or repair of the said rail road from the city of Baltimore to the Ohio river.

15. *And be it enacted,* That the president and directors of said company, or a majority of them, or any person or persons authorized by a majority of them, may agree with the owner or owners of any land, earth, timber, gravel, stone, or other materials, or any improvements which may be wanted for the construction or repair of any of said roads, or of any of their works, for the purchase or use and occupation of the same, and if they cannot agree, or if the owner or owners, or any of them, be a *feme covert*, under age, *non compos mentis*, or out of the county in which the property wanted may lie, when such land or materials shall be wanted, application may be made to any justice of the peace of such county, who shall thereupon issue his warrant, under hand and seal, directed to the sheriff of said county, requiring him to summon a jury of twenty inhabitants of said coun-

ty, not related nor in anywise interested, to meet on the land, or near to the other property or materials to be valued, on a day named in said warrant, not less than ten nor more than twenty days after the issuing of the same, and if at said time and place any of said jurors summoned do not attend, the said sheriff shall immediately summon as many jurors as may be necessary with the jurors in attendance, to furnish a pannel of twenty jurors in attendance, and from them each party, or its, his, her, or their agent, if either be not present in person or by agent, the sheriff, for him, her, it, or them, may strike off four jurors, and the remaining twelve shall act as the jury of inquest of damages; and, before they act as such, the said sheriff shall administer to each of them an oath, or affirmation, as the case may be, that he will justly and impartially value the damages which the owner or owners will sustain by the use or occupation of the same, required by the company; and the jury, in estimating such damages, shall take into the estimate the benefit resulting to the said owner or owners from conducting such rail road through, along, or near, to the property of said owner or owners, but only in extinguishment of the claim for damages; and the said jury shall reduce their inquisition to writing, and shall sign and seal the same, and it shall then be returned, by said sheriff, to the clerk or prothonotary of his county, as the case may be, and by such clerk or prothonotary filed in his court, and shall be confirmed by said court at its next session, if no sufficient cause to the contrary be shown; and, when confirmed, shall be recorded by said clerk or prothonotary, at the expense of said company, but if set aside, the said court may direct another inquisition to be taken, in the manner above prescribed; and such inquisition shall describe the property taken, or the bounds of the land condemned, and the quantity or duration of the interest in the same, valued for the company, and such valuation, when paid or tendered to the owner or owners of said property, or his, her, or their legal representatives, shall entitle the said company to the estate and interest in the same, thus valued, as fully as if it had been conveyed by the owner or owners of the same; and the valuation, if not received when tendered, may at any time thereafter be received from the company, without costs, by the said owner or owners, or his, her, or their legal representative or representatives.

16. *And be it enacted*, That wherever, in the construction of said road or roads, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the president and directors of said company so to construct the said road across such established road or way, as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon-ways across said road or roads, from one part of his land to the other.

17. *And be it enacted*, That whensoever it shall be necessary for said company to have, use, or occupy, any lands, materials, or other property, in order to the construction or repair of any part of said

road or roads, or their works or necessary buildings, the president and directors of said company, or their agents, or those contracting with them for making or repairing the same, may immediately take and use the same, (they having first caused the property wanted to be viewed by a jury, formed in the manner herein before prescribed) in those cases where the property is to be changed or altered by admixture with other substances before such alteration is made, and that it shall not be necessary, after such view, in order to the use or occupation of the same, to wait the issue of the proceedings upon such view; and the inquest of the jury, after confirmation and after payment or tender of the valuation, shall be a bar to all actions for taking or using such property, whether commenced before or after such confirmation, or the payment of said valuation.

18. *And be it enacted*, That the said president and directors, or a majority of them, shall have power to purchase, with the funds of the said company, and place on any rail road constructed by them under this act, all machines, wagons, vehicles, or carriages of any description whatsoever, which they may deem necessary or proper for the purposes of transportation on said road, and they shall have power to charge for tolls upon (and the transportation of persons) goods, produce, merchandise, or property of any kind whatsoever, transported by them along said rail way from the city of Baltimore to the Ohio river, any sum not exceeding the following rates, viz: On all goods, produce, merchandise, or property of any description whatsoever, transported by them from west to east, not exceeding one cent a ton per mile, for toll, and three cents a ton per mile for transportation; on all goods, produce, merchandise, or property of any description whatsoever, transported by them from east to west, not exceeding three cents a ton per mile for tolls, and three cents a ton per mile for transportation, and for the transportation of passengers not exceeding three cents per mile for each passenger; and it shall not be lawful for any other company, or any person or persons whatsoever, to travel upon or use any of the roads of said company, or to transport persons, merchandise, produce, or property of any description whatsoever, along said roads, or any of them, without the license or permission of the president and directors of said company; and that the said road or roads, with all their works, improvements and profits, and all the machinery of transportation used on said road, are hereby vested in the said company, incorporated by this act, and their successors, forever; and the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the States assenting to this law.

19. *And be it enacted*, That the said president and directors shall annually, or semi-annually, declare and make such dividend as they may deem proper, of the nett profits arising from the resources of the said company, after deducting the necessary current and probable contingent expenses; and that they shall divide the same amongst the proprietors of the stock of said company, in proper proportions to their respective shares.

20. *And be it enacted,* That if any person or persons shall wilfully, by any means whatsoever, injure, or impair, or destroy, any part of any rail road, constructed by said company under this act, or any of their necessary works, buildings, carriages, vehicles or machines, of said company, such person or persons, so offending, shall, each of them, for every such offence, forfeit and pay to the said company, the sum of five hundred dollars, which may be recovered in the name of said company, by an action of debt, in the county court of the county wherein the offence shall be committed, and shall also be subject to indictment in said court, and upon conviction of such offence, shall be punished by fine and imprisonment, in the discretion of the court.

21. *And be it enacted,* That as soon as this act shall have been passed by the legislature of Maryland, books may be opened, subscriptions received, and the said company organized, and that when organized, the said company, and the President and Directors of the same, shall have all the powers, rights and privileges, granted by this act, and shall be subject to all its regulations in constructing or repairing any of the said rail roads, or other necessary works or buildings, which may, or can be constructed within the limits of the State of Maryland, and in transporting persons, goods, merchandise, or property of any description, along any of said roads, and that the provisions of this act shall be wholly in force, as to all the property of the company, which may be situated or may be within the State of Maryland, and which said company is permitted to hold under this act.

22. *And be it enacted,* That if said road shall not be commenced in two years from the passage of this act, and shall not be finished within this State, in ten years from the time of the commencement thereof, then this act shall be null and void.

23. *And be it enacted,* That full right and privilege is hereby reserved to the citizens of this State, or any company hereafter to be incorporated under the authority of this State, to connect with the road hereby provided for, any other rail road, leading from the main route to any part or parts of this State, provided that in forming such connection no injury shall be done to the works of the company hereby incorporated.

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